UNITED STATES CIRCUIT COURT OF APPEALS FOR THE FIRST CIRCUIT.

OCTOBER TERM, 1942.

No. 3883.

MARIO MERCADO E HIJOS,

PLAINTIFF, APPELLANT,

v.

ELVIRA OLIVIERI COMMINS ET AL.,

DEFENDANTS, APPELLEES.

APPEAL FROM THE SUPREME COURT OF PUERTO RICO,
FROM JUDGMENT, JULY 31, 1942.

TRANSCRIPT OF RECORD.

WILLIAM CATTRÓN RIGBY,
FRED W. LLEWELLYN,
PEDRO M. PORRATA,
for Appellant.
JOSE SABATER,
for ELVIRA OLIVIERI COMMINS, *Appellee.*
LEOPOLDO TORMES,
LUIS LOPEZ DE VICTORIA,
for LLUBERAS PASSARELL ET AL., *Appellees.*

BOSTON:
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1943

TABLE OF CONTENTS.

	PAGE
Court (Circuit of Appeals) and Title of Case	1
Transcript of Record:	
Title of Case in District Court, Ponce, P. R.	1
Complaint	2
Demurrer	13
Motion for setting Demurrer for Hearing	14
Demurrer	15
Motion on Stipulation	16
Motion	18
Minutes of April 26, 1937	19
Order (demurrers overruled)	19
Answer of Lluberas Passarell et al.	21
Answer of Elvira Olivieri Commins	26
Statement of the Case and Opinion of the District Court	31
Judgment of the District Court	45
Service of Judgment	46
Notice of Appeal to Supreme Court of Puerto Rico	46
Certificate of Service of Notice	47
Motion for Transcript of Evidence and Order thereon	48
Certificate of Attorneys	50
Transcript of Evidence	51
Testimony of Elvira Olivieri Commins	78
Manuel Francisco Lluberas	104
Jose R. Peralta	126, 140
Clotilde Gomez	136
Pedro M. Porrata	164
Mario Mercado-Riera	168
Fernando Zapater-Martinez	179
Emilio Noel Blasini-Totti	186
Elvira Olivieri-Commins (recalled)	218

PAGE

Exhibits for Plaintiff:

A,—Partition Deed, Aug. 20, 1936 225
B,—Deed, March 9, 1937, partial cancellation of mortgage, etc. 260
C,—Deed, July 7, 1935, extension of partnership .. 269
D,—Certificate of Registrar of Property, Ponce, P. R., Jan. 13, 1938 273
E,—Deed, March 31, 1937, ratification 281
F,—Record of proceedings in District Court, Ponce, P. R., *in re* ratification, etc. 286
G,—Deed, Feb. 25, 1937, voluntary mortgage 303
H,—Receipt for deposit in clerk's office, District Court, Ponce, P. R. 311
I,—Deed, March 8, 1937, cancellation of mortgage 312
J,—Deed, March 23, 1932, voluntary mortgage ... 322
K,—Deed, April 6, 1937, notarial act of demand .. 330
L,—Complaint in Civil No. 310, Mario Mercado e Hijos *v.* Elvira Olivieri-Commins 348
M,—Amended Complaint in Civil No. 310 359
N,—Telegram, Jan. 23, 1936, Elvira Olivieri to Plaintiff 371
O-1,—Telegram, Feb. 5, 1937, Barleta to Plaintiff ... 372
O-2,—Telegram, Feb. 10, 1937, Barleta to Peralta .. 372
O-3,—Telegram, Jan. 14, 1937, Barleta to Peralta 372
O-4,—Telegram, Feb. 18, 1937, Barleta to Peralta ... 372
O-5,—Telegram, Jan. 9, 1937, Barleta to Peralta 373
P,—Telegram, Jan. 14, 1937, Central Rufina to Barleta 373
Q,—Telegram, Jan. 23, 1937, Barleta to Plaintiff .. 373
R,—Letter, Dec. 15, 1936, Elvira Olivieri to Plaintiff 373
S,—Letter, Feb. 6, 1937, Barleta to Plaintiff 374
T,—Contract of Lease, March 9, 1937 375
U,—Statements by Elvira Olivieri to Porrata, etc. .. 381

PAGE

Defendants' Exhibits:
1,—Record in Civil No. 7850, etc. 384
2,—Assignment of Mortgage Credit, May 9, 1933 .. 397
3,—Notice of Assignment, May 9, 1933 412
4,—Record in No. 203, Civil 425
5,—See Exhibit I of the Plaintiff 312
6,—See Exhibit B of the Plaintiff 260
7,—See Exhibit G of the Plaintiff 303
8,—Four Promissory Notes 454
9,—Certificate of Registrar of Property for Ponce, Aug. 7, 1939 460
10,—See Exhibit T of the Plaintiff 375
Approval of Transcript of Evidence 473
Opinion of Supreme Court of Puerto Rico 474
Judgment 488
Motion for Reconsideration 488
Notice of Appeal 490
Costs and Supersedeas Bonds filed 491
Designation of Record on Appeal 491
Certificate of Mailing 492
Order denying Motion for Reconsideration 493
Enlargement of time for docketing case 493
Certificate of Translation 494
Certificate of Clerk of Supreme Court of Puerto Rico 495

Proceedings in Circuit Court of Appeals:
Statement of Points 495
Statement on Appeal 498
Exhibits A,—Affidavit of Mario Mercado Riera 513
B,—Complaint 2, 514
Motion to Dismiss 514
Judgment of Circuit Court of Appeals 518
Mandate stayed 518
Certificate of Clerk of Circuit Court of Appeals 518

Order allowing certiorari 519

UNITED STATES CIRCUIT COURT OF APPEALS FOR THE FIRST CIRCUIT.

OCTOBER TERM, 1942.

No. 3883.

MARIO MERCADO E HIJOS,
PLAINTIFF, APPELLANT,
v.
ELVIRA OLIVIERI COMMINS ET AL.,
DEFENDANTS, APPELLEES.

IN THE SUPREME COURT OF PUERTO RICO.

TRANSCRIPT OF RECORD.

[FILED IN CIRCUIT COURT OF APPEALS MARCH 26, 1943.]

IN THE DISTRICT COURT FOR THE JUDICIAL DISTRICT OF PONCE, PUERTO RICO.

CIVIL CASE NO. 311.

MARIO MERCADO E HIJOS, Plaintiff,
v.
ELVIRA OLIVIERI COMMINS, MANUEL FRANCISCO LLUBERAS PASSARELL and his wife HAZELL KELLY LLUBERAS, ANTONIA LLUBERAS PASSARELL, ROSA ELENA LLUBERAS PASSARELL, GRACIELA LLUBERAS PASSARELL and her husband ANTONIO VALENTI MAESTRE, CELIA LLUBERAS PASSARELL and her husband EMILIO BLASINI TOTTI, and RAQUEL LLUBERAS PASSARELL, Defendants.

In re: RESCISSION OF SALE AND OTHER PARTICULARS.

COMPLAINT.

[Filed April 8, 1937.]

To the Honorable Court:

Now comes the plaintiff herein through its undersigned counsel before this Honorable Court and as its cause of action respectively alleges:

1. That the plaintiff, "Mario Mercado e Hijos", is an agricultural civil partnership with its domicile in Ponce, Puerto Rico.

2. That the defendants are all of them above 21 years of age and domiciled as follows: Elvira Olivieri Commins in Mayaguez, Puerto Rico; Manuel Francisco Lluberas Passarell and his wife Hazell Kelly Lluberas and Antonia Lluberas Passarell in Yauco; Rosa Elena Lluberas Passarell, Graciela Lluberas Passarell and her husband Antonio Valenti Maestre, and Raquel Lluberas Passarell in the City of New York, United States of America, and Celia Lluberas Passarell and her husband Emilio Blassini Totti in Ponce, Puerto Rico.

3. That by public deed No. 13 executed on March 23, 1932, before notary Fernando Zapater Martinez, who acted in the place of notary Jose Tous Soto, recorded in the Registry of Property of Ponce, of which paper a literal copy is attached to this complaint and made part thereof, Mrs. Elvira Olivieri Commins executed and subscribed four promissory notes payable to holder by endorsement and dated March 23, 1932, the first three respectively in the sum of ten thousand dollars as principal, two thousand seven hundred dollars for interest thereon and five hundred dollars for costs, expenses, disbursements and attorney's fees, and the fourth in the sum of eleven thousand two hundred and fifty-six dollars and eighty-nine cents as principal, three thousand dollars for interest thereon and five hundred dollars for costs, disbursements and attorney's fees, all of which to mature on March 23, 1939.

4. That in order to secure the above four promissory notes, defendant Mrs. Elvira Olivieri Commins by said deed No. 13 of

March 23, 1932, executed before notary Mr. Fernando Zapater Martinez, who acted in the place of notary Jose Tous Soto, executed a voluntary mortgage on her undivided joint half interests in the following estate:

"NUMBER ONE: A piece of rural property known as Juanita lying in the Pueblo and Quebrada barrios within the municipal district of Guayanilla. It contains 481.77 cuerdas more or less, equivalent to 189 hectares, 35 ares and 45 centiares, partly flat land applied to sugar canes and partly hilly and wooded land. There is built thereon a dwelling frame house raised from the ground, with galvanized-iron roof, and a shed for storing produce. It is bounded on the north by land of Rafael Lopez, of the Rufina plantation, belonging to Mario Mercado e Hijos, and the Heirs of Domingo Torres represented by Isabel Yordan; on the south by said Rufina plantation; on the west by land of the San Rafael plantation owned by the Heirs of Franceschi, by land of Andres Negroni and by land of Antonio Ramos. On the north (*sic*) by land of the latter, by land of the Heirs of Ramon Lopez, by land of Joaquin Lugo and by the road leading to Piedras Blancas barrio, and on the opposite side by land of Antonio Llabres." Said estate is crossed by part of the railroad track.

"NUMBER TWO: A piece of rural property known as Los Indios lying in the Indios barrio within the municipal district of Guayanilla with an area of 430 cuerdas equivalent to 169 hectares, 69 centiares, applied to sugar canes, pastures, saltpeter works and woods. There is built thereon a frame house, roofed with galvanized iron and in part with shingles; another frame house, peon quarters, a house for overseers and some other buildings. It is bounded on the north by the road leading from the Barina barrio to the Indios barrio, of Guayanilla, by land of the sugar cane plantation owned by Trujillo & Mercado, now, Mario Mercado e Hijos, and by land of the Heirs of Juan Irizarry; on the east by land of

Gabriel Garcia, by land of the Faro plantation owned at present by Mario Mercado e Hijos and formerly by Trujillo Mercado & Company and by mangroves of the maritime zone; on the south by the Yauco river and by land of Mercedes plantation owned by Lluberas Hermanos, and on the west by land of Ulises Olivieri and by land of the Heirs of Antonio Perez."

5. That in the third paragraph of the body of the said deed, Mrs. Elvira Olivieri Commins acknowledged to be indebted to the partnership Mario Mercado e Hijos in the sum of $41,256.89 arising from a liquidated current account at the time of the execution of the aforesaid deed, and in payment of which defendant Mrs. Elvira Olivieri Commins endorsed and delivered to the partnership Mario Mercado e Hijos the four mortgage notes mentioned in paragraph 3 of the complaint and received and accepted by the latter.

6. That defendant Mrs. Elvira Olivieri Commins and the partnership Mario Mercado e Hijos, by means of said deed No. 13 of March 23, 1932, executed before notary Fernando Zapater Martinez, who acted in the place of notary Jose Tous Soto, and as stated on its seventh and eleventh clauses, literally agreed the following:

"SEVENTH: OPTION TO PURCHASE AND SELL AND TO LEASE.—Notwithstanding the foregoing clause, the debtor, as part of the consideration of this contract, agrees with the partnership Mario Mercado e Hijos, so long as the mortgage credit herein constituted is not paid, to grant it priority to purchase and sell or lease her undivided joint interests in the estates Indios and Juanita upon the same price and terms. To this effect, the debtor shall advise, unless such mortgage credit is paid, by registered letter to Mario Mercado e Hijos, of any offer of sale or lease made to her and said partnership shall be granted thirty days for accepting or refusing such offer and during said period the debtor cannot sell or lease to anybody else. Should there be a sale or lease in

violation of this agreement, Mario Mercado e Hijos shall be entitled to repurchase from the purchaser or lessee, which right it can exercise for thirty days from the record of such sale or lease for subrogating itself to the place, degree or priority of the purchaser or lessee."

"ELEVENTH: The parties likewise agree that the actual partition of said estates cannot be carried out without the consent of Mario Mercado e Hijos so long as the mortgage herein constituted is in force."

7. That by public deed No. 23 of May 9, 1933, executed before the aforesaid notary Fernando Zapater, the partnership Mario Mercado e Hijos conveyed to the Heirs of Jose Tous Soto, made up of Belen Gonzalez de Tous, Belen Maria, Gladys, Jorge, Hector, Jose, Luz-Belen, Ana-Rosa, Celia and Alicia Tous y Gonzalez, the amount of the aforesaid mortgage credit of $41,256.89, and interest thereon not yet accrued, through the proper endorsement and delivery by the plaintiff to the aforesaid heirs of the four mortgage credits hereinbefore described.

8. That at the time of the said conveyance of the four mortgage credits above mentioned to the Heirs of Jose Tous Soto, plaintiff Mario Mercado e Hijos stipulated with said heirs to reserve and it did reserve to itself the right of option to sell and repurchase as agreed upon by defendant Elvira Olivieri Commins and the plaintiff, pursuant to clause 7 hereinbefore transcribed of said deed No. 13 of March 23, 1932, before notary Fernando Zapater Martinez, as substitute of Jose Tous Soto.

9. That by public deed No. 33 of August 20, 1936, executed before notary Tomas Paz Ruiz, recorded in the Registry of Property of Ponce, defendant Elvira Olivieri Commins and her sister Santia Olivieri Commins, as the sole joint owners, proceeded to the actual partition of the estates described in paragraph 4 of this complaint, there being alloted to said defendant Elvira Olivieri Commins, in satisfaction of her undivided joint interests in

the said estates the parcels of land and condominiums described as follows:

ONE: The whole estate known as Juanita described in No. 1 of the fourth averment of this complaint, with an area of 81.77 cuerdas of flat land and 378.91 cuerdas of hilly land.

TWO: Full ownership of a rural estate—a parcel of land containing 79.46 cuerdas, equivalent to 31 hectares, 23 ares, 8 centiares, 79 miliares, lying in the Indios barrio within the municipal district of Guayanilla, which are subdivided in the following five parcels, which, according to the plat of the survey made by engineer Juan Herminio Sanchez Diaz on December 5, 1935, are marked as follows:—Parcel "A" with an area of 41.26 cuerdas known by the name of Cupey of flat land planted to sugar canes; Parcel "B" containing 4 cuerdas, of flat land, planted to sugar canes; Parcel "C" having 20.52 cuerdas of semi-flat land at present planted to lesser crops; Parcel "D" containing 1.78 of semiflat land planted to lesser crops; and Parcel "E" containing 12 cuerdas of semiflat land planted to lesser crops. The whole tract is bounded as follows: on the north by land of Santia Olivieri, the track of the American Railroad Company and from the west angle of Parcel "D" by the municipal road leading from Guayanilla to the Boca barrio; on the south by land of Arturo Lluberas and nephews, by the Yauco river, by a 0.30-cuerda undivided parcel containing the pump and belonging to Santia and Elvira Olivieri Commins, and with land of Santia Olivieri; on the east by land of Santia Olivieri, and on the west by land of Mariano Lugo, by land of Ramon Ramirez, and by an old road which divided land of Ramon Lluberas, Luis Cervoni, Dolores Lopez and land of Luis Cervoni and on the southwest land of Arturo Lluberas and nephews. The fact is recorded that all along the estate there is a private road belonging to

Santia and Elvira Olivieri, 6-meter wide, which proceeds along the west side of Parcel "B" as far as the undivided 0.30-cuerda parcel where the irrigation pump stands. Within this tract, but enclosed by said Parcel "C" there is a small parcel of land jointly owned by Santia and Elvira Olivieri with an area of 0.25 cuerda and there is built thereon a small house with a concrete foundation for a pump. And it is hereby explained that the aforesaid parcels marked letters "E" and "D" are separated, the former, partly on its east side, by the road leading from Guayanilla to Boca barrio and the latter by the railroad track, both in connection with Parcel "C", and the former is also separated in connection with the latter by the said railroad track. (*sic*)

THREE: Full ownership of a portion or parcel of saltpeter land lying in the Indios barrio of the municipal district of Guayanilla and bounded: on the north by land of Mario Mercado e Hijos; on the south with a cano within the land of Santia Olivieri; on the east by the Caribbean Sea and on the west by a 6-meter wide road, three meters of which is part of this parcel and the other three meters part of the parcel of land belonging to Santia Olivieri. Its area is 41.99 cuerdas, equivalent to 16 hectares, 50 ares, 37 centiares and 7 miliares of saltpeter land.

FOUR: A $50.00 Undivided Half Interest in the following $100.00-worth parcel and a $175.00-worth interest in the value of the pump standing on said parcel, which pump was appraised at $700.00, described as follows: "Undivided parcel of land with an area of 0.30 cuerda, equivalent to 11 ares, 79 centiares and 12 miliares with a small house thereon fenced and roofed with galvanized-iron, with a steam pump with every accessory and pipes for pumping water from the Yauco river for the irrigation of the estates belonging to Santia and Elvira Olivieri, situated in the Indios barrio of the municipal district of Guayanilla and bounded as follows: on the north by land belonging to Elvira Olivieri Commins;

on the south by the Yauco river; on the east by land belonging to Santia Olivieri Commins and on the west by land belonging to Elvira Olivieri Commins."

FIVE: A $50.00 undivided half interest in the following $100.00-worth parcel: Rural: an undivided parcel of land measuring 0.25 cuerda, equivalent to 9 ares, 82 centiares and 60 miliares, possibly destined to have installed thereon a pump for drawing water from adjacent springs, with a cement foundation with a small house roofed and fenced with galvanized iron, and pipes. This parcel of land is situated in the Indios barrio of the municipal district of Guayanilla and bounded as follows: on the north, west and east by parcel "C" of the estate belonging to Elvira Olivieri Commins; and on the south by parcel "A" known as Cupey from the same estate of Elvira Olivieri Commins.

10. That in the said deed of partition of jointly owned property, mentioned in the foregoing paragraph, there appeared plaintiff Mario Mercado e Hijos and gave its consent to the said partition of jointly owned property.

11. That prior to March 8, 1937, and on the best information and belief of plaintiff, the aforesaid defendant Elvira Olivieri Commins, as vendor, and the other defendants, as purchasers, while the option clause inserted in the mortgage deed of March 23, 1932, mentioned in paragraph 3 of this complaint was in force, conspired among themselves with the deliberate purpose of defrauding the plaintiff partnership Mario Mercado e Hijos of its right to exercise the right of redemption as agreed in clause 7 of the aforesaid deed No. 13 dated March 23, 1932, executed before notary Fernando Zapater Martinez acting in the place of Jose Tous Soto, entered into a contract of sale of the estates and condominiums already described in paragraph 9 of this complaint, and marked with the numbers 2, 3, 4 and 5, the purchase price being $40,000, all the defendants having notice of the right of option held by plaintiff Mario Mercado e Hijos at the time of such sale in regard to said holdings.

12. That on the day following, that is, March 9, 1937, said defendant Elvira Olivieri Commins, as vendor, and the other defendants, as purchasers, embodied in a public deed executed before notary Luis Lopez de Victoria the contract of sale entered into between them, and to which mention has already been made, said deed of sale having been presented for record in the Registry of Property of Ponce on March 10, 1937, and recorded on March 23, 1937.

13. That neither defendant Elvira Olivieri Commins, nor any of the other defendants, nor anybody else in their behalf advised plaintiff Mario Mercado e Hijos prior to the time when the former agreed upon and executed the said contract of sale of the estates and condominiums already described, or subsequent to such sale by registered letter or in any other way, the offer to buy for $40,000 the said properties made to said defendant Elvira Olivieri Commins by the other defendants, the partnership Mario Mercado e Hijos being informed of the execution of such contract of sale on March 10, 1937, by defendant Manuel Francisco Lluberas.

14. That plaintiff, should it have been advised as to the said offer to buy prior to the execution of such sale, would have been ready, as it is now ready, to pay for the properties described under Nos. 2 and 3 of paragraph 9 of this complaint and for the condominiums described under Nos. 4 and 5 of said paragraph, the same purchase price paid by the defendants purchasers to the defendant vendor for the properties above described, to wit: $35,000 for the immovable described under No. 2; $1,000 for the parcel described in No. 3; and $2,000 for each of the condominiums described in Nos. 4 and 5 of said paragraph 9 of this complaint as well as all other necessary disbursements made by the defendants on account of such sale. Plaintiff alleges that it is ready to comply with each and everyone of the terms imposed on defendant purchasers by defendant vendor, by virtue and as the result of such contract of sale entered into between them in connection with the aforesaid holdings.

15. That plaintiff desires to exercise and does hereby exercise his right to subrogate itself to the place, degree and priority of defendant purchasers regarding the properties the subject matter of said contract of sale, pursuant to the aforesaid clause of option to buy set forth in paragraph 7 of the mortgage deed dated March 23, 1932, executed before notary Fernando Zapater Martinez, acting in the place of notary Jose Tous Soto.

16. That on this day and in Civil Case No. entitled Mario Mercado e Hijos, plaintiff, *v.* Elvira Olivieri Commins, Manuel Francisco Lluberas Passarell, and his wife Hazell Kelly Lluberas, Antonio Lluberas Passarell, Rosa Elena Lluberas Passarell, Gracelia Lluberas Passarell and her husband Antonio Valenti Maestre, Celia Lluberas Passarell and her husband Emilio Blasini Totti, and Raquel Lluberas Passarell, defendants, there has been deposited in the office of the clerk of this court the sum of $40,359.50, itemized as follows:

Amount of the purchase price paid by the defendants Lluberas Passarell to Elvira Olivieri Commins for the estates and condominiums mentioned in paragraph 9, under Nos. 2, 3, 4 and 5	$40,000.00
Amount disbursed for the deed of sale	200.00
Internal revenue stamps for the copy	20.00
Recording thereof in the registry of property	89.50
Necessary disbursements and unknown to plaintiff that may have been incurred by defendants	50.00
	$40,359.50

17. That the plaintiff hereby reproduces and makes part of this complaint all the allegations set forth in the complaint in the said Civil Case No. 310, offering and placing at the disposal of the defendants the sum of $40,359.50 deposited in said civil action in legal tender of the United States of America and for the accounts set forth in the petition in question.

By virtue whereof, plaintiff Mario Mercado e Hijos respectfully

prays this Honorable Court to render a judgment, at the proper time and after the proper legal procedure, with the following pronouncements:

(a) To decree the rescission of the contract of sale dated March 9, 1937, executed before notary Luis Lopez de Victoria.

(b) To decree the subrogation of the partnership Mario Mercado e Hijos to the rights of the defendant purchasers of holdings 2, 3, 4 and 5 hereinbefore described in paragraph 9 of this complaint, ordering the latter to execute in favor of plaintiff the proper deed of sale thereof, and in case of refusal on the part of the latter, upon the judgment becoming final that the marshal of this Honorable Court executes such contract of sale.

(c) To grant to the plaintiff any other remedy congruent with the averments of this complaint and any evidence submitted at the proper time, all of which in accordance with law, and

(d) To adjudge the defendants to pay any costs that might be incurred by the plaintiff by reason of the present action, including attorney's fees.

Ponce, Puerto Rico, April 7, 1937.

PEDRO M. PORRATA,
FELIX OCHOTECO, JR.,
by FELIX OCHOTECO, Jr.,
Counsel for Plaintiff.

OATH.

I, Mario Mercado Riera, duly sworn, hereby declare: that the above is my name, that I am of age, married, a resident of Ponce, Puerto Rico; that I am assistant-manager partner of plaintiff Mario Mercado e Hijos, an agricultural civil partnership, domiciled in Ponce, Puerto Rico. That each and every one of the facts alleged in the present complaint are known to me personally and the same are true except those alleged in paragraph 11 of said complaint which I believe to be true on information and belief.

Ponce, Puerto Rico, April 7, 1937.

MARIO MERCADO, Jr., *Affiant.*

Affidavit No. 13782.

Sworn to and subscribed before me by Mario Mercado Riera, of age, married, assistant-manager and partner of the agricultural civil partnership Mario Mercado e Hijos, whom I know personally.

Ponce, Puerto Rico, April 7, 1937.

R. ATILES MOREU,
Notary Public.

(There is affixed hereto and cancelled a $0.25 Internal Revenue stamp and another $5.00 Internal Revenue stamp and a $1.00 Bar Association stamp.)

(There was attached to the foregoing complaint an uncertified copy of deed No. 13, dated March 23, 1932, executed in Mayaguez, Puerto Rico before notary Fernando Zapater Martinez, which deed was accepted in evidence and marked Exhibit J of plaintiff which copy is literally transcribed on pages 322 to 330 of the transcript of the documentary evidence.)

(NOTE: Likewise there was attached to the complaint above transcribed a copy of the complaint *In re:* Deposit of money in court in Civil Case No. 310 of this court, entitled Mario Mercado e Hijos, plaintiff, *v.* Elvira Olivieri Commins, Manuel Francisco Lluberas Passarell and his wife Hazell Kelly Lluberas, Antonia Lluberas Passarell, Rosa Elena Lluberas Passarell, Graciela Lluberas Passarell and her husband Antonio Valenti Maestre, Celia Lluberas Passarell and her husband Emilio Blasini Totti, and Raquel Lluberas Passarell, defendants, which complaint was submitted and admitted in evidence and marked Exhibit L of the plaintiff, which is transcribed on pages 348 to 359 of the documentary evidence.)

[Same Title.]

DEMURRER.

To the Court:

Now come defendants Manuel Francisco Lluberas Passarell and his wife Hazell Kelly Lluberas, Antonia and Rosa Elena Lluberas Passarell, Graciela Lluberas Passarell and her husband Antonio Valenti Maestre, Celia Lluberas Passarell and her husband Emilio Blasini Totti and Raquel Lluberas Passarell, through their undersigned attorney and interpose the following demurrer to the complaint of the plaintiff:

That the complaint fails to state facts sufficient to constitute a cause of action (subdivision 6 of section 105 of the Code of Civil Procedure).

PRAYER.

For the above reasons they pray the court to dismiss the complaint in every respect, with costs on the plaintiff.

Yauco (for filing in Ponce), April 14, 1937.

Respectfully,

LUIS LOPEZ DE VICTORIA,
Attorney for the above-mentioned Defendants.

CERTIFICATE OF SERVICE OF NOTICE.

I, Luis Lopez de Victoria, do hereby certify:

That I am the attorney for defendants Manuel Francisco Lluberas Passarell and his wife Hazell Kells [*sic*] Lluberas, Antonia and Rosa Elena Lluberas Passarell, Graciela Lluberas Passarell and her husband Antonio Valentin [*sic*] Maestre, Celia Lluberas Passarell and her husband Emilio Blasini Totti and Raquel Lluberas Passarell.

That I served a copy of the foregoing demurrer on counsel for plaintiff, attorney Felix Ochoteco, Jr., and attorney Pedro M. Porrata, as follows: I mailed to each of them from the post-office of Yauco and enclosed in envelopes properly closed, with

the required postage, registered and addressed respectively to attorney Felix Ochoteco, Jr., Ochoa Building, San Juan, Puerto Rico, and attorney Pedro M. Porrata, Ponce, Puerto Rico, true and faithful copies of said demurrer with true and faithful copy of this return signed by me. Between Yauco, where I have my domicile and office and San Juan and Ponce respectively where attorneys Felix Ochoteco, Jr., and Pedro M. Porrata are respectively domiciled and have their offices, there is a federal regular and daily mail service.

Yauco, Puerto Rico, April 14, 1937.

LUIS LOPEZ DE VICTORIA,
Attorney for the above-mentioned Defendants.

(There are affixed hereto and cancelled a $5.00 Internal Revenue stamp and the Bar Association stamp. Likewise there is on the margin of the first folio a handwritten note reading as follows: "The parties have been notified to appear on April 26/37 this 15th of April, 1937. Filed April 15/37.")

[Same Title.]

MOTION FOR SETTING DEMURRER FOR HEARING.

To the Clerk of the Court:

Now come defendants Manuel Francisco Lluberas Passarell and his wife Hazell Kells [*sic*] Lluberas, Antonia and Rosa Elena Lluberas Passarell, Graciela Lluberas Passarell and her husband Antonio Valentin [*sic*] Maestre, Celia Lluberas Passarell and her husband Emilio Blasini Totti and Raquel Lluberas Passarell, through their undersigned attorney and move that the demurrer interposed by these defendants to the complaint herein be set for argument upon the special calendar of this court on Monday, April 26, 1937, at 9:00 A.M.

Yauco, Puerto Rico, April 14, 1937.

LUIS LOPEZ DE VICTORIA,
Attorney for the above-Defendants.

(There is affixed hereto and cancelled a $5.00 Internal Revenue stamp.)

CERTIFICATE OF SERVICE OF NOTICE.

I, Luis Lopez de Victoria, do hereby certify:

That I am the attorney for defendants in the present action Manuel Francisco Lluberas Passarell and his wife Hazell Kells [*sic*] Lluberas, Antonia and Rosa Elena Lluberas Passarell, Graciela Lluberas Passarell and her husband Antonio Valentin [*sic*] Maestre, Celia Lluberas Passarell and her husband Emilio Blasini Totti and Raquel Lluberas Passarell.

That I served a copy of the foregoing motion for setting demurrer for hearing on the attorneys for plaintiff, Felix Ochoteco, Jr., and Pedro M. Porrata, as follows: I forwarded to each of them by mail from the Yauco post-office enclosed in several envelopes duly sealed, postage paid, registered and respectively addressed as follows: attorney Felix Ochoteco, Jr., Ochoa Building, San Juan, Puerto Rico, and attorney Pedro M. Porrata, Ponce, Puerto Rico, with several true and faithful copies of the present return signed by me. Between Yauco where I am domiciled and have my law office, and San Juan and Ponce, where attorneys Felix Ochoteco, Jr., and Pedro M. Porrata are respectively domiciled and have their law offices, there is a federal, regular daily mail service.

Yauco, Puerto Rico, April 14, 1937.

LUIS LOPEZ DE VICTORIA,
Attorney for the above Defendants.

[Same Title.]

DEMURRER.

Now comes Elvira Olivieri Commins, a defendant herein, through her attorney Jose Sabater and demurrs to the complaint of the plaintiff on the following ground:

That the complaint fails to state facts sufficient to constitute a cause of action in favor of the plaintiff and against this defendant.

Therefore: This defendant prays the court to sustain this demurrer and to dismiss the complaint herein and to render judgment against the plaintiff and in favor of this defendant, with costs, expenses, disbursements and attorney's fees on the plaintiff.

Mayaguez (for filing in Ponce), April 14, 1937.

JOSE SABATER,
Counsel for Defendant, ELVIRA OLIVIERI COMMINS.

I do hereby certify: That on this day, April 14, 1937, I mailed with the required postage to attorney Pedro M. Porrata and attorney Felix Ochoteco, Jr., plaintiff's counsel, at their domicile in San Juan, Puerto Rico, with their offices in the Ochoa Building, a true and faithful copy of the foregoing demurrer and likewise on April 14, 1937, I mailed with the required postage to attorney Luis Lopez de Victoria, counsel for the defendant, at his residence in Yauco, Puerto Rico, a true and faithful copy of the foregoing demurrer; and stating that between this city of Mayaguez, where the undersigned attorney has his domicile and the cities of San Juan and Yauco, there is a regular mail service.

JOSE SABATER,
Counsel for Defendant, ELVIRA OLIVIERI COMMINS.

(There is affixed hereto and cancelled a $5.00 Internal Revenue stamp as well as a Bar Association stamp.)

[Same Title.]

MOTION ON STIPULATION.

Now comes Elvira Olivieri Commins, defendant herein, through her undersigned attorney Jose Sabater and respectfully states:

1. That there has been set for next Monday the 26th instant, on the special calendar, the hearing of the demurrer interposed by this defendant to the complaint herein; but inasmuch as attorney Felix Ochoteco, Jr., one of the attorneys for the plaintiff, has suggested to the undersigned attorney that said demurrer be argued

by briefs, this attorney to file his brief within ten days from the 26th instant, and the attorney for the plaintiff to submit his brief within ten days from the notice of the brief of this attorney.

2. That this attorney has accepted the above proposition and has been informed that attorney Luis Lopez de Victoria, counsel for the other defendants, has also accepted the proposition and has so informed attorney Felix Ochoteco, Jr., by wire, with the request that the stipulation be submitted in writing; and inasmuch that said stipulation has not yet reached this attorney and in order that this case should be not unnecessarily delayed;

Therefore: This defendant prays this Honorable Court to approve the said stipulation and to direct that instead of oral argument at the hearing set for the 26th instant, *In re:* the demurrer, the same be submitted on briefs in the manner set forth.

Mayaguez (for filing in Ponce), April 24, 1937.

JOSE SABATER,
Counsel for Defendant, ELVIRA OLIVIERI COMMINS.

I hereby certify: That on this day, April 24, 1937, I forwarded by mail with the required postage to Felix Ochoteco, Jr., attorney for plaintiff, at his domicile in San Juan, Puerto Rico, and to Luis Lopez de Victoria, attorney for co-defendants, at his domicile in Yauco, Puerto Rico, a true and faithful copy of the foregoing motion regarding stipulation. I want to state that between this city of Mayaguez, where the undersigned attorney has his domicile, and the cities of San Juan and Yauco there is a regular mail service.

JOSE SABATER,
Attorney for Defendant, ELVIRA OLIVIERI COMMINS.

[Same Title.]

MOTION.

Now come the Lluberas co-defendants through their undersigned attorneys and state:

That argument on the demurrer to the complaint is set for April 26, 1937, at 9:00 A.M.

That Felix Ochoteco, Jr., attorney for plaintiff, has suggested by wire to this party to argue said demurrer by means of briefs, this attorney to be allowed ten days for filing briefs and the plaintiff's attorneys ten days for answering, which proposal has been accepted. The wire from attorney Felix Ochoteco, Jr., is hereby enclosed.

Wherefore we pray the court that in said oral argument upon the demurrer there should be accepted from us a brief in support thereof which we will file within ten days counted from April 26, 1937, and that the same shall be answered by the plaintiff within ten days from the service of copy of said brief.

Yauco (for filing in Ponce), April 24, 1937.

Respectfully submitted,

LUIS LOPEZ DE VICTORIA,
Attorney for the LLUBERAS, *Defendants.*

I, Luis Lopez de Victoria, do hereby certify:

That I served copies of this motion today by mail, forwarding several true and faithful copies of said motion and of the present return in envelopes properly sealed, with postage paid, and addressed to attorneys for the plaintiff, Felix Ochoteco, Jr., and Pedro M. Porrata, at their respective postal addresses in San Juan and Ponce, and to the attorney for co-defendant Elvira Olivieri Commins, Jose Sabater, at his postal address in Mayaguez, Puerto Rico.

Yauco, Puerto Rico, April 24, 1937.

LUIS LOPEZ DE VICTORIA,
Attorney for the LLUBERAS, *co-Defendants.*

[Same Title.]

MINUTES OF APRIL 26, 1937.

The demurrers to the complaint herein having been called for hearing and the same having been submitted by means of briefs, in compliance with a wire from Felix Ochoteco, Jr., attorney for the plaintiff, the court grants the parties ten days each for filing said briefs, priority in filing briefs corresponding to the parties filing the demurrer.

(From Minutes Book No. 32, First Section, session of April 26, 1937, presided by Judge D. Sepulveda. I hereby certify: That a copy of the foregoing order has been forwarded to attorneys Pedro M. Porrata, Ponce, attorney Felix Ochoteco, Jr., San Juan, attorney Luis Lopez de Victoria in Yauco, and attorney Jose Sabater, Mayaguez, on even date.)

I attest: E. GOTAY PURCELL, *Clerk*.

[Same Title.]

ORDER.

In the instant case all the defendants, through their respective counsel, filed a demurrer to the complaint in which they alleged that said complaint failed to state facts sufficient to constitute a cause of action. (Subdivision 6 of Section 105 of the Code of Civil Procedure.)

Upon stipulation of all the parties said demurrer was submitted on briefs to the court for consideration.

Four very elaborate and interesting briefs were submitted, the latter of which having been filed on July 2, 1937.

The delay in the determination of the legal questions submitted was due to the following causes: the undersigned judge was engaged from August 1 to September 10 in the trial and determination of civil and criminal cases; that from September 13 to December 6 he presided the trial by jury for the murder of

detective Ceferino Loyola and that from that time until now he has been engaged in the trial and determination of civil and criminal cases. During July the judge was on vacation.

The legal questions involved having been discussed from every imaginable argument in the briefs which contain innumerable citations of codes, legal doctrines and decisions which the judge has had to study outside office hours.

The court, after careful consideration of the complaint herein and the briefs filed, reaches the conclusion that the complaint, admitting as true the allegations therein, states facts sufficient to constitute a cause of action in favor of the plaintiff and against all of the defendants.

The court hereby overrules the demurrer for insufficiency interposed by the defendants to the complaint.

The defendants are granted ten days for filing their answer to the complaint.

Ponce, Puerto Rico, March 25, 1938.

D. SEPULVEDA,
District Judge.

SERVICE OF NOTICE.

To Attorneys FELIX OCHOTECO, San Juan, LUIS LOPEZ DE VICTORIA, Yauco, JOSE SABATER, Mayaguez, P. R.:

You are hereby served with notice of the foregoing order of even date made by this court.

I hereby certify: That I have today attached to the record in the instant case the original copy of the present service of notice.

Ponce, Puerto Rico, March 25, 1938.

E. GOTAY PURCELL, *Clerk.*

[Same Title.]

ANSWER.

Now come defendants Manuel Francisco Lluberas Passarell and his wife Hazel Kells [*sic*] Lluberas, Antonia Lluberas Passarell, Rosa Elena Lluberas Passarell, Graciela Lluberas Passarell and her husband Antonio Valenti Maestre, Celia Lluberas Passarell and her husband Emilio Blasini Totti and Raquel Lluberas Passarell, who hereinafter shall be called co-defendants "Lluberas Passarell" and through their undersigned attorney answer the complaint herein and allege:

First. They admit the first paragraph of the complaint.

Second. They admit the second paragraph of the complaint.

Third. They admit the third paragraph of the complaint.

Fourth. They admit the fourth paragraph of the complaint.

Fifth. They admit the fifth paragraph of the complaint.

Sixth. Of the sixth paragraph of the complaint co-defendants Lluberas Passarell admit that in deed No. 13 of March 23, 1932, executed before notary Fernando Zapater Martinez, acting in the place of notary Jose Tous Soto and whereby Elvira Olivieri Commins mortgaged to plaintiff the estates described in the fourth paragraph of the complaint, there was inserted in clause 7 thereof the agreement literally transcribed in the sixth paragraph of the complaint which we now answer.

Seventh. They admit the seventh paragraph of the complaint.

Eighth. As regards the eighth paragraph of the complaint co-defendants Lluberas Passarell deny on information and belief that in the conveyance of the mortgage credit by the plaintiff to the heirs of Jose Tous Soto, Mario Mercado e Hijos agreed with the aforesaid heirs to reserve to itself the right of purchase and redemption referred to in the sixth paragraph of the complaint; and they on the contrary allege that in making the said conveyance and in the deed whereby the same was made no reservation whatever was set forth as regards the said conveyance and that

neither was Elvira Olivieri Commins, when notified of such conveyance, informed that Mario Mercado e Hijos had reserved to itself such right of purchase and redemption, it having been set forth in the deed of conveyance of the said mortgage credit (which is deed No. 33, executed in Ponce, Puerto Rico, on May 9, 1933, before notary Fernando Zapater Martinez) that the assignor subrogated the assignee to its place in the same degree and priority.

Ninth. They admit the ninth paragraph of the complaint.

Tenth. They admit the tenth paragraph of the complaint.

Eleventh. As regards the eleventh paragraph of the complaint these co-defendants deny that prior to March 8, 1937, co-defendant Elvira Olivieri Commins and co-defendants Lluberas Passarell, during the life of the option clause contained in the mortgage deed of March 23, 1932, mentioned in paragraph 3 of the complaint, conspired among themselves and with the deliberate purpose of defrauding the plaintiff of its right of redemption agreed upon in clause 7 of the said mortgage deed executed before notary Fernando Zapater Martinez, acting in the place of Jose Tous Soto, deed No. 13 of March 23, 1932, entered into a contract of sale of the estates and condominiums described in the ninth paragraph of the complaint, under Nos. 2, 3, 4 and 5; alleging on the contrary that the sale of said immovables was executed on March 9, 1937, according to deed No. 40, executed in Mayaguez, on March 9, 1937, before notary Luis Lopez de Victoria, when the aforesaid mortgage credit had already been duly and fully paid, judicial authorization therefore having been first obtained from the District Court of Ponce as per deed No. 47, executed in Ponce before notary Fernando Zapater Martinez on March 8, 1937.

Twelfth. Concerning the twelfth paragraph of the complaint these co-defendants deny that on March 9, 1937, Elvira Olivieri Commins and co-defendants Lluberas Passarell embodied in a public deed any contract of sale executed before the cancellation

of the aforesaid mortgage, and alleging on the contrary that the said sale was executed on March 9, 1937.

Thirteenth. They admit paragraph 13 of the complaint.

Fourteenth. In opposition to paragraph 14 of the complaint these co-defendants allege on information which they believe to be true: that before Elvira Olivieri Commins sold the estates sued upon to these co-defendants, she attempted to sell them to the plaintiff and the latter attempted to purchase them; but the prices offered by the plaintiff to Elvira Olivieri Commins were so low that the latter refused to accept them.

Fifteenth. As regards the fifteenth paragraph of the complaint these co-defendants admit that the plaintiff wishes to exercise the right to subrogate itself to the right, degree and priority of the purchasers concerning the estates involved in the aforesaid contract of purchase; but they deny that the plaintiff is entitled to exercise the same, on the ground that the agreement on which they pretend to base such right is void; and because the aforesaid sale took place after the full cancellation of the mortgage in consideration of which such right of redemption was agreed upon.

Sixteenth. They admit the sixteenth paragraph of the complaint.

Seventeenth. In answer to the seventeenth paragraph of the complaint co-defendants Lluberas Passarell, reproduce and make part of the present answer all the challenges and allegations of fact and of law which these co-defendants have made or may make in the future to the allegations of the plaintiff as set forth in the complaint in civil case No. 310 of this court in regard to deposit in court between these same parties.

NEW MATTERS OF DEFENSE.

As new matters of defenses we allege as follows:

(1) That the option to purchase and lease stipulated in the seventh clause of mortgage deed No. 13 of March 23, 1932, executed before notary Fernando Zapater, acting in the place of notary Jose Tous Soto, which clause seven is transcribed in the

sixth paragraph of the complaint, is void for the following reasons:

(A) Because the same amounts to an agreement whereby the mortgagee is empowered to adjudicate to itself the mortgagor's property by reason of the nonperformance of the contract secured by mortgage (Sections 2 and 4 of Act No. 47 of April 13, 1916 to repress usury).

(B) Because the same amounts to an agreement whereby the mortgagor is precluded from alienating or freely disposing of her property (subdivision 4 of Section 107 of the Mortgage Law; *Van Syckel* v. *The Registrar of Property*, 3 P.R.R. 9; and *Clausells* v. *Registrar of Property*, 20 P.R.R. 298).

(C) Because it conflicts with Section 1412 of the Civil Code.

(D) Because it tends to create a right that cannot be created, that is, a right of redemption to be enforced by someone who was not the vendor of the property but a mortgagee against a lessee.

(2) Should said clause 7 of deed No. 13 of March 23, 1932, executed before notary Fernando Zapater Martinez, acting in the place of notary Jose Tous Soto, be valid, the right of redemption would be extinguished and prescribed by reason of the lapse of more than four years after the same had been granted (Sections 1397 and 1078 of the Civil Code).

(3) Should plaintiff be entitled to an action of conventional redemption against defendants Lluberas Passarell, the plaintiff has failed to comply with the legal provisions regarding the very essential particular of the deposit in court, because although it deposited such amount in court, it did it separately, that is, within a different proceeding, that is, civil case No. 310 of this court, instead of doing so within this same proceeding, case No. 311, for which reason such deposit in court is not legally binding in the present case.

PRAYER.

By virtue whereof they pray the Honorable Court to render in due course a judgment dismissing the complaint in every particular, taxing the costs against the plaintiff.

Yauco, Puerto Rico, April 20, 1938.

Respectfully,

LUIS LOPEZ DE VICTORIA,
Attorney for co-Defendants LLUBERAS PASSARELL.

OATH.

I, Manuel Francisco Lluberas Passarell, do solemnly swear:

That the above is my name and that I am more than twenty-one years old, married, property owner and a resident of Yauco, Puerto Rico, and that I am one of the co-defendants in the present action.

That I have read myself the facts alleged in the foregoing answer and find that all of them are true and personally known to me, except those which I believe true on information and belief and as such I swear to them.

Yauco, Puerto Rico, April 20, 1938.

M. FRANCISCO LLUBERAS, *Affiant.*

Affidavit No. 71.

Sworn to and subscribed before me by Manuel Francisco Lluberas Passarell whose personal characteristics are stated above, whom I personally know.

Yauco, Puerto Rico, April 20, 1938.

ANGEL PADRO,
Notary Public.

CERTIFICATE OF SERVICE OF NOTICE.

I, Luis Lopez de Victoria, do hereby certify:

That I am the attorney for co-defendants Lluberas Passarell in the present action.

That I served copy of the foregoing answer on counsel for

plaintiff, attorney Felix Ochoteco, Jr., and attorney Pedro M. Porrata as follows: I forwarded to each of them by mail from the post-office of Yauco and enclosed in various envelopes properly closed, with the required postage, registered and respectively addressed as follows: attorneys Felix Ochoteco, Jr., Ochoa Building, San Juan, Puerto Rico; and attorney Pedro M. Porrata, Ponce, Puerto Rico, several true and faithful copies of said answer with a true and faithful copy of this return signed by me. Between Yauco, where I have my domicile and office and San Juan and Ponce where attorneys Felix Ochoteco, Jr., and Pedro M. Porrata, respectively, reside and have their offices, there is a federal regular and daily mail service.

Yauco, Puerto Rico, April 22, 1938.

LUIS LOPEZ DE VICTORIA,
Attorney for co-Defendants LLUBERAS PASSARELL.

(There is cancelled a $0.25 stamp.)

[Same Title.]

ANSWER OF DEFENDANT ELVIRA OLIVIERI COMMINS.

Now comes defendant Elvira Olivieri Commins through her attorney Jose Sabater and in answer to the complaint herein alleges as follows:

FIRST. This defendant admits the averments of paragraphs 1, 2, 3, 4 and 5 of the complaint.

SECOND. This defendant admits that in mortgage deed No. 13 of March 23, 1932, executed before notary Fernando Zapater, acting in the place of notary Jose Tous Soto, there was stated clause seven which is transcribed in paragraph 6 of the complaint; but it is alleged by this defendant that said clause was inserted by said plaintiff in said mortgage deed without this defendant being aware of its scope and meaning, to which she was compelled to submit due to her status as debtor at the time of the execution of said deed; that at the time of the execution of such mortgage deed

and insertion of that clause, plaintiff Mario Mercado e Hijos was neither a co-owner of the mortgaged property nor a vendor thereof; that it was agreed between the plaintiff and this defendant that such agreement would be effective between the parties as long as the defendant was a mortgage debtor to Mario Mercado e Hijos and this defendant never consented to empower the plaintiff to appropriate to itself the property nor was it agreed or covenanted between the parties to forbid to defendant to dispose freely of her property.

THIRD. This defendant admits the contents of paragraph 7 of the complaint.

FOURTH. This defendant denies in its entirety paragraph 8 of the complaint and alleges on the contrary that when making the conveyance referred to in said paragraph and in the deed whereby the same was carried out no reservation was made as regards such agreement and when this defendant was notified of such conveyance of mortgage credit she was not advised nor acquainted with nor notified in legal form or otherwise that plaintiff Mario Mercado e Hijos had reserved to itself such right of option to sell and repurchase, it being stated in said deed of conveyance of the said mortgage credit—which is deed No. 33, executed in Ponce on May 9, 1933, before notary Fernando Zapater Martinez—that the grantor Mario Mercado e Hijos subrogated itself to the place of the grantee in the same degree and priority.

FIFTH. This defendant admits the contents of paragraph 9 of the complaint.

SIXTH. This defendant admits the allegations of paragraph 10 of the complaint.

SEVENTH. Regarding paragraph 11 of the complaint this defendant denies that on March 9, 1937, when this defendant sold the immovables referred to in such paragraph by deed No. 40, executed in Mayaguez, on the same 9th of March, 1937, before notary Lopez de Victoria, there was still in force the option clause inserted in the mortgage deed of March 23, 1932; and in opposition

to the averments of said paragraph she alleges that at that time the aforesaid mortgage credit had already been fully paid and cancelled, which payment and cancellation were effected pursuant to the judicial authorization from the District Court of Ponce, according to deed No. 47, executed in Ponce before notary Fernando Zapater Martinez on March 8, 1937.

Concerning said paragraph 11 of the complaint, this defendant denies to have conspired with the other defendants or with anybody else to defraud the plaintiff as to the agreement to repurchase referred to in said paragraph or for any other purpose or end; and this defendant further alleges in opposition to the allegations of said paragraph that when she sold to the other defendants, said option clause, which was forced by the plaintiff upon this defendant according to the mortgage deed of March 23, 1932, and that it was illegal and improper, was cancelled because this defendant had fully paid the mortgage credit and for that reason this defendant had ceased to be indebted to the plaintiff, this defendant disposing of said properties after having fully paid the mortgage in which the said option clause had been forced by the plaintiff upon the defendant.

EIGHTH. As regards paragraph 12 of the complaint, this defendant denies that on March 9, 1937, she and the other defendants embodied in a public deed executed before notary Luis Lopez de Victoria, the contract of sale entered into between them and alleges on the contrary that the said sale was entered into and perfected on March 9, 1937, by deed No. 40, executed in Mayaguez on the date above stated before the aforesaid notary when the mortgage credit constituted in favor of the plaintiff and conveyed by the latter to the heirs of Jose Tous Soto had already been fully paid and cancelled.

NINTH. Concerning paragraph 13 of the complaint this defendant admits that, having fully paid the mortgage credit referred to to the grantee thereof she failed to advise the plaintiff regarding the sale made by her to the other defendants, to which reference is made in said paragraph; and she denies for lack of

information and belief that the plaintiff partnership got information regarding the contract of sale on March 10, 1937, or at any other time.

TENTH: Regarding paragraph 14 of the complaint this defendant denies the hypothetical allegation that the plaintiff, should it have been advised of the proposal to purchase, would have been willing to pay for the properties and the condominiums the amount paid to this defendant by the defendant purchasers and this defendant further alleges that prior to the sale made to the other defendants by this defendant, during the life of the mortgage in which the option clause was imposed on this defendant, the plaintiff refused on several occasions to buy from the defendant on the ground that no other purchaser would be forthcoming and that when the mortgage credit became due it would compel this defendant to either sell or have the mortgage foreclosed.

ELEVENTH. As to paragraph 15 of the complaint this defendant denies that plaintiff is entitled to avail itself of the option to purchase set forth in the mortgage deed of March 23, 1932, executed before notary Fernando Zapater Martinez acting in the place of notary Jose Tous Soto, for the reason that this defendant had fully paid said mortgage and had fully cancelled the same and being, after the cancellation, at liberty to dispose freely of her property.

TWELFTH. Regarding paragraph 16 of the complaint this defendant admits that the deposit in court to which said paragraph refers was effected by the plaintiff in civil case No. 310 of this court, but she alleges that such deposit in court is legally ineffective because the same was not effected in this action.

THIRTEENTH. In answer to paragraph 17 of the complaint this defendant reproduces and makes part of the present answer all the denials and averments made by this defendant in this answer or that she may make in the future to the allegations of the plaintiff as set forth in the complaint in the said civil case No. 310 of this court regarding deposit in court between these same parties.

SPECIAL DEFENSE.

This defendant alleges that clause 7 of deed No. 13 of March 23, 1932, executed before notary Fernando Zapater y Martinez, acting in the place of notary Jose Tous Soto, was forced by the plaintiff upon the defendant while the latter was indebted to the plaintiff; that at the time said option to purchase and sell was inserted in the said mortgage deed, the plaintiff was not the vendor of the immovables but only a mortgagee; that plaintiff could not adjudicate to itself the property of this defendant in case of nonfulfillment of the contract secured by mortgage, nor could it prevent this defendant from disposing of, and alienating freely, said property, and that the option to repurchase or redeem was extinguished by the full payment by this defendant of the said mortgage credit and that the right of redemption was forfeited by plaintiff when conveying its mortgage credit to the Heirs of Jose Tous Soto and it moreover had prescribed because four years had elapsed from the time the same was granted. (Sections 1397 and 1078 of the Civil Code.)

Therefore: This defendant prays this Honorable Court to render a final judgment dismissing the complaint herein in all its parts and tax the costs, expenses and the fees of this defendant's attorney on the plaintiff.

JOSE SABATER,
Counsel for Defendant ELVIRA OLIVIERI COMMINS.

OATH.

Island of Puerto Rico,
Municipality of Yauco, ss.

Affidavit No.

I, Elvira Olivieri Commins, having been duly sworn, state: That I am one of the defendants in the present case; that I have read the foregoing answer drawn up by my attorney Jose Sabater whom I have authorized for the purpose and that I know the contents of such answer and state that the facts therein alleged are true and

known to me personally except as to those which I allege on information and belief which I also believe to be true.

ELVIRA OLIVIERI COMMINS.

Affidavit No. 73.

Sworn to and subscribed before me by Mrs. Elvira Olivieri Commins, of age, property owner, domiciled in Mayaguez, Puerto Rico, whom I personally know.

Yauco, Puerto Rico, April 21, 1938.

ANGEL PADRO,
Notary Public.

CERTIFICATE OF SERVICE OF NOTICE.

I hereby certify that on this the 21st of April, 1938, I forwarded by mail after paying the required postage to Felix Ochoteco, Jr., attorney for plaintiff at his domicile in San Juan, Puerto Rico, and to Luis Lopez de Victoria, attorney for the other defendant at his domicile in Yauco, Puerto Rico, a true and faithful copy of the foregoing answer respectively; and I hereby state that between this city of Mayaguez where the undersigned attorney has his domicile and the cities of San Juan and Yauco there is a regular mail service.

JOSE SABATER,
Attorney for Defendant Mrs. ELVIRA OLIVIERI COMMINS.

(There is a file seal duly affixed hereto to the effect that on April 22, 1938 and at 9:10 A.M. this paper was filed in the office of the clerk of this court.)

[Same Title.]

STATEMENT OF THE CASE AND OPINION OF DISTRICT COURT.

Due to the fact that the two above-entitled cases have been submitted on the same evidence and on the same briefs to the consideration and decision of this court and because in both cases the fundamental questions of fact and law are identical, we will decide them together in this opinion.

Case No. 311 refers to the rescission of a contract of purchase and sale and case No. 312 refers to the rescission of a contract of lease.

In the complaint in case No. 311 regarding the rescission of a contract of purchase and sale it is substantially alleged as follows:

That Mrs. Elvira Olivieri Commins executed four promissory notes to holder negotiable by indorsement, secured by a mortgage upon her undivided joint half interests in the estates Juanita and Indios which are bounded by land belonging to the plaintiff in the municipal district of Guayanilla.

That in the same deed in which was embodied the mortgage to secure the aforesaid promissory notes, Mrs. Elvira Olivieri Commins acknowledged to be indebted to plaintiff Mario Mercado e Hijos in the sum of $41,256.89 and that the latter agreed to accept such notes in payment of the aforesaid indebtedness. That it was further agreed as part consideration of the agreement to accept the payment with the mortgage notes of a debt payable in legal tender, that Elvira Olivieri Commins bound herself to grant the plaintiff priority for the purchase and lease of her condominiums on the same price and conditions so long as the mortgage was in force, and that in case of a sale in violation of such agreement, the plaintiff was empowered to prosecute the proper action of redemption.

That it was further agreed, pursuant to the eleventh clause of the said deed No. 13 of March 23, 1932, transcribed in the complaint in the above-entitled case, that the actual division of the condominiums in the tracts Juanita and Indios could not be effected without the consent of the partnership Mario Mercado e Hijos so long as the mortgage notes were in force.

It is further alleged in said complaint that plaintiff conveyed the amount of the mortgage notes to the Heirs of Jose Tous Soto and that it was agreed in said conveyance with the aforesaid heirs that the plaintiff partnership should reserve, and it did reserve to itself, the right of option and redemption referred to.

That the conveyance of the mortgage notes was carried out on.

May 9, 1933. That after the lapse of two years, three months and eleven days, that is, on August 21, 1936, defendant Mrs. Elvira Olivieri Commins and her sister Santia made the actual division of their condominiums in the mortgaged properties, and pursuant to said eleventh clause of the mortgage deed, the partnership Mario Mercado e Hijos appeared and gave its consent to the aforesaid act.

The preliminary facts having been thus established, it is further alleged in the complaint that said defendants conspired between themselves with the deliberate purpose of defrauding the plaintiff and during the life of the said option clause which is transcribed in full in said complaint they sold the properties adjudicated to Mrs. Elvira Olivieri Commins in payment of her condominiums, without notifying the plaintiff of any offer to purchase and with the knowledge on the part of "all of the defendants of the right of option held in regard to said properties at the time of the execution of the said sale by plaintiff Mario Mercado e Hijos".

The plaintiff then states in said complaint its willingness to redeem the property of the defendants who acquired as the result of the alleged conspiracy. It declares itself ready to pay the same amount paid by the purchasers and in order to show its good faith it attaches to its complaint and makes it part thereof another action to deposit money in court filed in the office of the clerk of this court which was filed after having requested of the defendants to convey to it the title to the properties fraudulently sold. (The complaint in the action to deposit money in court was filed together with the indispensable tender of payment.)

Defendant Mrs. Elvira Olivieri Commins filed a separate answer and the other defendants filed theirs jointly.

In the said answers the defendants admitted everything alleged in paragraphs 1, 2, 3, 4, 5, 7, 9 and 10 of the complaint and denied the remaining paragraphs and by way of special defense they pleaded as follows:

(a) That clause 7 of deed No. 13 of March 23, 1932, executed

before notary Fernando Zapater Martinez, acting in the place of notary Jose Tous Soto, was forced by plaintiff upon the defendant Olivieri Commins while the latter was indebted to plaintiff; that at the time of the said option to purchase and lease was inserted in the said deed of mortgage, the plaintiff was not a debtor but a creditor concerning said estates; that the plaintiff could not adjudicate to itself the estates of this defendant in case of nonperformance of the contract secured by mortgage nor could it prevent this defendant from alienating or freely disposing of such estates and that the option to purchase or redeem was extinguished by the fact of the payment in full by defendant Elvira Olivieri Commins of the aforesaid mortgage credit and that the plaintiff forfeited the right to redemption by conveying the mortgage credit to the heirs of Jose Tous Soto, and, besides, such right prescribed because more than four years had elapsed from the time of its creation. (Sections 1397 and 1078 of the Civil Code.)

(b) That said clause 7 is void, moreover, because the same amounts to an agreement whereby the mortgage is empowered to adjudicate to itself the mortgagor's property upon nonperformance of the contract secured by mortgage. (Sections 2 and 4 of Act No. 47 of April 13, 1916, to repress usury.)

(c) Because the same amounts to an agreement whereby the mortgagor is forbidden to alienate or freely dispose of her property. (Subdivision 4 of Article 107 of the Mortgage Law; *Van Syckel* v. *The Registrar of Property*, 3 P.R.R. 9 and *Clausells* v. *Registrar of Property*, 20 P.R.R. 298.)

(d) Because the same conflicts with Section 1412 of the Civil Code.

(e) Because it seeks to create a right that cannot be created, that is, a right of redemption to be exercised by someone who was not the vendor of the property but a mortgagee.

(f) Because, should such right of redemption be valid, the plaintiff failed to comply with the legal provisions as regard the tender of payment, inasmuch as the tender made by it was made separately, that is, within another proceeding, that is, in civil case

No. 310 of this court, instead of doing so within the above en titled case.

In the complaint in case No. 312, *In re:* Rescission of Lease, the same allegations are substantially made as in the complaint in case No. 311, with the only alteration of the allegation made in paragraph 11 of said complaint (case No. 312), that is to say:

That Mrs. Elvira Olivieri Commins, prior to March 8, 1937, in conspiracy with the other defendant, Emilio Blasini Totti, leased to the latter the rural estate known as "Juanita", which is described in paragraph 9 of the complaint in said case No. 312.

The defendants in the instant case No. 312, answered the complaint separately, admitting certain facts therein alleged and denying the others, and alleging also the same defenses pleaded by the defendants in case No. 311.

The trial of case No. 311, *In re:* Rescission of Sale, was held in this District Court of Ponce on the 13th, 14th, 15th and 16th of November, 1939, with the appearance of plaintiff Mario Mercado e Hijos, represented by its attorneys Felix Ochoteco and Pedro M. Porrata, the defendants appearing through the attorneys Luis Lopez de Victoria, Leopoldo Tormes and Jose O. Sabater.

Both sides submitted copious documentary and oral evidence which was admitted.

At the close of the trial of case No. 311 it was stipulated by all the parties, with the approval of the court, to submit, as they did, case No. 312 on the same evidence submitted by both sides on the aforesaid case No. 311.

Both cases were submitted on briefs which were duly filed and filling 208 pages, the last of them having been filed on September 20, 1940.

The court, from the admissions made in the answers of the defendants and from the evidence introduced by both sides which was duly and jointly considered, makes among others, the following:

FINDINGS OF FACT.

By public deed No. 13 of March 23, 1932, executed before notary Fernando Zapater Martinez, defendant Elvira Olivieri Commins secured by a mortgage upon her condominiums in the estates Juanita and Indios, four promissory notes negotiable by indorsement which she executed, and at the same time she acknowledged to owe to plaintiff Mario Mercado e Hijos the sum of $41,256.89, and the latter partnership agreed to accept said promissory notes in payment of the amount owed.

Said mortgage deed contained, among others, the following clause:

> "SEVENTH: OPTION TO PURCHASE AND SELL AND TO LEASE.—Notwithstanding the foregoing clause the debtor, as part of the consideration of this contract, agrees with the partnership Mario Mercado e Hijos, so long as the mortgage credit herein constituted is not paid, to grant it priority to purchase and sell or lease her undivided joint interests in the estates Indios and Juanita upon the same price and terms. To this effect, the debtor shall advise, unless such mortgage credit is paid, by registered letter to Mario Mercado e Hijos, of any offer of sale or lease made to her and said partnership shall be granted thirty days for accepting or refusing such offer and during said period the debtor cannot sell or lease to anybody else. Should there be a sale or lease in violation of this agreement, Mario Mercado e Hijos shall be entitled to repurchase from the purchaser or lessee, which right it can exercise for thirty days from the record of such sale or lease for subrogating itself to the place, degree or priority of the purchaser or lessee."

By a public deed No. 33 of May 9, 1933, executed before notary Fernando Zapater Martinez of Ponce, the partnership Mario Mercado e Hijos conveyed to the heirs of Jose Tous Soto the said mortgage credit, by means of the proper indorsement and delivery by said partnership Mario Mercado e Hijos to the heirs

of Tous Soto of the four mortgage notes already referred to. It does not appear from this deed of conveyance of credit that the partnership Mario Mercado e Hijos reserved to itself the rights of option to sell and lease specified in clause 7 of deed No. 13 of March 23, 1932, which clause 7 is hereinbefore transcribed in this opinion. Nor does it appear proven that such reservation of rights was made in the registry of property on the record corresponding to the conveyance of the mortgage credit.

Obligor Elvira Commins was advised of the conveyance of the credit by means of an uncertified copy of the deed of conveyance.

By deed No. 30 of February 25, 1937, executed before notary Luis Lopez de Victoria, Elvira Olivieri Commins mortgaged the aforesaid estates Juanita and Indios for $45,000 to defendant Manuel Francisco Lluberas Passarell, of which sum the latter retained the amount of $41,000 to satisfy the mortgage credit constituted in favor of Mario Mercado e Hijos and conveyed to the heirs of Jose Tous Soto.

By deed No. 47 of March 8, 1937, executed before notary Fernando Zapater, having first obtained the proper judicial authorization, the heirs of Jose Tous Soto cancelled the mortgage credit against Mrs. Elvira Olivieri Commins, which credit had been conveyed to said heirs by plaintiff Mario Mercado e Hijos.

By deed No. 40 of March 9, 1937, executed before notary Luis Lopez de Victoria, defendant Elvira Olivieri Commins sold for $40,000 the estate Indios to the other defendant Manuel Francisco Lluberas Passarell.

By another deed, that is, deed No. 41 of even date, March 9, 1937, and executed before the same notary Lopez de Victoria, Elvira Olivieri Commins leased to the other defendant Emilio Blasini Totti the rural estate known as Juanita.

By deed No. 72, executed in Ponce before notary Fernando Zapater on March 31, 1937, (that is, subsequent to the cancellation of the mortgage by the heirs of Jose Tous Soto), it was set forth by said heirs that "the conveyance made by the partnership Mario Mercado e Hijos to said heirs did not include the right or

rights set out in favor of Mario Mercado e Hijos in clause 7, *In re:* 'Option to Sell and Lease' contained in mortgage deed No. 13 of March 23, 1932 (Exhibit 'J' of plaintiff); Mario Mercado e Hijos reserving to itself the rights and obligations mentioned in said clause during the whole time of the life of the mortgage".

Deed No. 72, *supra,* was approved by this District Court of Ponce, according to judgment rendered on April 7, 1937, in civil case No. 299 of this court (Exhibit E of the plaintiff).

By deed No. 7 of April 7, 1937, executed before notary Pedro M. Porrata, Elvira Olivieri Commins was summoned to receive a certain sum of money pursuant to said clause 7 regarding option to sell and lease but Elvira Olivieri Commins refusing to accept the money.

Thereupon the partnership Mario Mercado e Hijos, on April 8, 1937, deposited in the office of the clerk of this District Court in case No. 310, *In re:* Deposit of Money in Court, the sum of $45,359.50, as per receipt No. 702 of the clerk (Exhibit H of plaintiff).

The plaintiff then, on April 8, 1937, filed the complaints in cases Nos. 311 and 312, *In re:* Rescission of Sale and Rescission of Lease, respectively.

It has also been shown that according to deed No. 73 of August 20, 1936, (while the mortgage credit conveyed to the Heirs of Jose Tous Soto was still in force), the partnership Mario Mercado e Hijos intervened in said deed No. 73, *In re:* Actual Division of Rural Estate and other particulars, which deed was executed before notary Tomas Paz Ruiz (Exhibit A of plaintiff) and gave its consent for said partition of property held in common.

It has also been shown that neither Elvira Olivieri Commins nor any of the defendants, nor anybody else in their behalf, advised in any way to plaintiff herein Mario Mercado e Hijos, prior to the time when they were agreed upon, the lease and sale of the estates Juanita and Indios, nor at any time afterwards, Mario Mercado e Hijos becoming aware of such deals on March 10, 1937. And that the said partnership always was and is now ready

to subrogate itself to the place of the purchasers and lessees of said estates for the same price and rentals and on the same terms as those of the contract of sale and lease whose rescission is hereby sought.

It also appears to have been shown that both Elvira Olivieri Commins and all the other defendants in cases Nos. 311 and 312 were advised, prior to the execution of the contract of sale and lease, of the right of option to purchase and lease held by Mario Mercado e Hijos concerning the estates Juanita and Indios.

From the testimony of Elvira Olivieri Commins (page 81 of the transcript of record) it appears as a fact that she authorized her son-in-law Rafael Barletta to enter into negotiations with Mario Mercado e Hijos for the lease or sale of the estates Juanita and Indios.

From the testimony of Jose R. Peralta, manager of the plaintiff partnership, (page 126 *et seq.* of the transcript of record) and from certain telegrams and letters mentioned in such testimony and which were admitted in evidence, it appears as a fact that from December, 1936, until May 8, 1937, Rafael Barletta and the partnership Mario Mercado e Hijos held conversations and meetings in regard to the possible purchase and lease of the said immovables from Elvira Olivieri Commins to the plaintiff partnership.

Questions of Law.

The learned counsel for both sides, in elaborate and thorough briefs, raised and discussed very important questions of law, which the court has carefully studied and considered in connection with the fact alleged.

Counsel for both sides raised and discussed seven questions of law in their respective briefs.

We have studied and considered them all, but in our judgment the most important of them for the determination of the present cases are as follows:

"1.—Whether or not the plaintiff showed conspiracy and

fraud on the part of the defendants for the purpose of cheating the said plaintiff of its rights in connection with said clause 7 of option to sell and lease.

"2.—Whether or not clause 7 of said deed regarding the option to sell and lease binding the said mortgagor in favor of the said partnership became extinguished by virtue of the payment of the mortgage executed by Mrs. Elvira Olivieri Commins in favor of Mario Mercado e Hijos (Exhibit 'J' of the plaintiff).

"3.—Whether by virtue of the conveyance from Mario Mercado e Hijos to the Heirs of Jose Tous Soto of the mortgage credit referred to in Exhibit 'J' of the plaintiff, the rights set forth in said clause 7 of option to sell and lease were likewise conveyed."

For a logical consideration of the above legal questions we will invert the order of their presentation and we will begin with question No. 3.

Article 152 of the Mortgage Law reads as follows:

"Art. 152. A mortgage credit may be conveyed or assigned to a third person in whole or in part, provided it be effected by means of a public instrument, notice of which is given to the debtor, and that it be recorded in the registry.

"The debtor shall not be bound by said contract to any further extent than he was by his own.

"The assignee *shall be subrogated to all the rights of the assignor.*" (Italics ours.)

The terms stipulated in the deed of conveyance of the mortgage credit are very explicit and do not leave any room for doubt as to the intention of the contracting parties, therefore the literal sense of its stipulations shall be observed (Section 1233 of the Civil Code, 1930 ed.) and there should not be understood as included in said contract things and cases different from those with regard to which the persons interested intended to contract (Section 1235 of the same statute). (*Sweet* v. *Zalduondo*, 26 P.R.R.

307; *Loiza Sugar Co.* v. *Hernaiz,* 35 P.R.R. 474; Section 26 of the Law of Evidence.)

According to Section 1759 of the Civil Code, the mortgage is essentially indivisible. The option to sell and lease was substantially part of said contract and, therefore, it was inseparable from the mortgage. (*Llinas* v. *Mariani,* 47 P.R.R. 543; *Montilla* v. *Van Syckel et al.,* 8 P.R.R. 153; *Puente* v. *Perez et al.,* 7 P.R.R. 181.)

Section 1418 of the Civil Code reads as follows:

> "Section 1418.—The sale or assignment of a credit includes that of *all the accessory rights,* such as the security, mortgage, pledge, or *privilege.*" (1930 ed.) (Italics ours.)

In his commentaries on the Civil Code, Vol. 10, pages 402–409, and commenting upon Section 1418 *et seq.* of said code (1930 ed.), Manresa, among other things, expresses himself as follows:

> "Now well: where nothing is stated, it is logical to presume, as the law presumes, *that the assignment of a principal right includes also the accessory right, which becomes a sort of supplement.*" (Italics ours.)
>
> "Where we do agree is that in the case of assignment of a credit subject to a resolutory condition, whose fulfillment depends upon the will of the creditor, *the latter cannot, after such credit is assigned, enforce the fulfillment of such condition.* On the one hand, because in agreeing upon the assignment he was a creditor no longer. And on the other hand, *because the assignment presupposes the waiver of his right which becomes incompatible with such waiver.*" (Italics ours.)

When Mario Mercado e Hijos conveyed to the heirs of Tous Soto the said mortgage credit it made a special stipulation in regard to the interests on the credit, but it failed to make any reservation in regard to the clause of option to sell and lease. Nor was said clause mentioned by the heirs of Tous Soto when it

applied to this court for leave to become the assignee of the credit, nor either when leave was sought for the cancellation of said credit by said heirs.

Neither deed No. 72 of May 31, 1937, executed before notary Zapater, regarding ratification of mortgage credit by the heirs of Tous Soto (Exhibit F of the plaintiff) nor the proceedings No. 299, before this court, regarding the approval of said deed, has any weight in the present cases, because said deed No. 72 was executed after the total cancellation of the mortgage credit by the heirs of Tous Soto.

For the foregoing, we come to the conclusion that "when Mario Mercado e Hijos conveyed to the heirs of Tous Soto the mortgage credit, it also conveyed the rights embodied in clause 7 of option to sell and lease".

Question of law No. 2, after the above statements when considering question No. 3, is decided by us affirmatively, as we come to the conclusion that "clause 7 of deed No. 13 of March 23, 1932, (Exhibit 'J' of the plaintiff) in regard to option to sell and lease become extinguished by virtue of the payment of the mortgage constituted by Elvira Olivieri Commins in favor of Mario Mercado e Hijos" (Section 1110 of the Civil Code, 1930 ed.).

We will now pass upon the question of law raised in No. 1, that is, "whether or not the plaintiff showed conspiracy and fraud on the part of the defendants for the purpose of cheating the said plaintiff of its rights in connection with said clause 7 of option to sell and lease".

The court having reached the two conclusions previously stated when affirmatively deciding the questions of law raised in Nos. 3 and 2, it necessarily has to reach the conclusion that Mario Mercado e Hijos, when bringing these actions on April 8, 1937, had neither right to nor interest in the mortgage that had been constituted in its favor by Elvira Olivieri Commins which Mario Mercado e Hijos had conveyed to the heirs of Jose Tous Soto.

"In an action to set aside an alleged fraudulent convey-

ance plaintiff cannot question the validity of the conveyance, *in the absence of allegation and proof that he is a creditor of the grantor.*" *First National Bank* v. *Eastman*, 144 Cal. 487, 103 Am. St. Rep. 95, 1 Ann. Cas. 626, 77 Pac. 1043. (Italics ours.)

(See also the case of *Congress Cigar Company* v. *Cabrera*, 45 P.R.R. 176.)

"Fraud must be proved by incontestable facts, or at least by a preponderance of evidence, for it cannot be established by presumption, conjecture or suspicion." (*Gomez* v. *Bravo et al.*, 34 P.R.R. 141; *Arruza* v. *Laugier*, 14 P.R.R. 24.)

"Every presumption being against fraud, and something more than a mere conjecture being necessary to establish its existence, it must be shown by means of clear, strong and convincing evidence." *Ortiz* v. *Clausells et al.*, 34 P.R.R. 509.

"A judge should not be impressed by a charge of fraud to the extent of exalting the importance of every fact on which suspicion may be raised of its having been committed and disdaining more logical deductions compatible with good faith." *Sabalier* v. *Iglesias et al.*, 34 P.R.R. 338.

The court comes to the conclusion that neither conspiracy nor fraud on the part of the defendants against the plaintiffs in these cases has been shown.

Having reached the foregoing conclusions, the court deems it unnecessary to consider the other questions of law raised and discussed in the present cases by counsel for both sides.

For the foregoing reasons it is the opinion of the court that a separate judgment should be rendered in each of cases Nos. 311 and 312, dismissing in each of them the complaint in all its parts, and adjudging the plaintiff to pay the costs and fees of counsel for the defendants.

Let a judgment be entered in each case congruent with the present opinion.

The undersigned judge wishes to state: that he is taking part in the determination of these cases under the authority expressly granted him in the *proviso* of Section 2 of Act No. 10, in regard to retirement, approved April 9, 1941, which became effective on the day of its approval, and that the resignation sent in by the undersigned judge in order to take advantage of the benefits granted by the said act of the Legislature of Puerto Rico became effective on the first of June, 1941.

D. SEPULVEDA,
District Judge, retired.

SERVICE OF NOTICE.

Attorneys PEDRO M. PORRATA *and* FELIX OCHOTECO, Jr., *Counsel for Plaintiff.*

Attorneys LUIS LOPEZ DE VICTORIA *and* LEOPOLDO TORMES, *Counsel for Defendants* LLUBERAS PASSARELL *and* EMILIO BLASINI.

Attorney JOSE SABATER, *Counsel for Defendant* ELVIRA OLIVIERI COMMINS.

You are hereby served with notice of the foregoing statement of the case and opinion delivered today.

I hereby certify: That the original of this service of notice has been filed in the record of the present case in Ponce, Puerto Rico, on this the 6th of October, 1941.

ALVARO MALDONADO,
Acting Clerk;
by J. AYALA,
Acting Assistant Clerk.

[Same Title.]

JUDGMENT OF DISTRICT COURT.

The court, on the grounds set forth in the opinion delivered on this day and attached to the record, renders judgment declaring that the law and the facts in the present case are adverse to plaintiff Mario Mercado e Hijos and favor defendants Elvira Olivieri Commins; Manuel Francisco Lluberas Passarell and his wife Hazell Kelly Lluberas; Antonia Lluberas Passarell; Rosa Elena Lluberas Passarell; Graciela Lluberas Passarell and her husband Antonio Valenti Maestre; Celia Lluberas Passarell and her husband Emilio Blasini Totti and Raquel Lluberas Passarell, and therefore dismisses the complaint in all its parts, and adjudges the plaintiff to pay the costs of this litigation in the sum of two thousand dollars ($2,000) as fees of counsel for defendants. And it is further ordered and decreed: that at the proper time and after compliance with the legal requisites there should be returned to plaintiff Mario Mercado e Hijos the sum of $45,359.50, deposited in court by said plaintiff in the case of this court No. 310, regarding deposit in court.

Let this judgment be entered as prescribed by law and let the marshal of this court issue at the proper time the writ for the execution thereof.

Delivered in Ponce, Puerto Rico, on this the sixth day of October, 1941, in accordance with Act No. 10 of Puerto Rico, approved April 9, 1941.

D. SEPULVEDA,
District Judge, retired.

[Same Title.]

SERVICE OF NOTICE OF JUDGMENT.

Attorneys FELIX OCHOTECO, Jr., *and* PEDRO M. PORRATA, San Juan, P.R., and Ponce, P R.

The undersigned clerk hereby notifies you that this District Court rendered judgment in the above-entitled case on October 6, 1941, which has been duly entered in the proper book and filed with the record in this case where you can inform yourself in detail of the terms thereof.

And as you are or represent the party aggrieved by the judgment, from which an appeal may be taken, I serve you with notice thereof, having filed with the record of this case a copy of it on February 6, 1941, in compliance with the provisions of Section 2 of the Act to amend Sections 92, 123, 227 and 299 of the Code of Civil Procedure, approved March 9, 1911. A copy of the judgment and of the statement of the case and the opinion of the court has been filed in my office together with the record on this the 6th of October, 1941, and personally delivered on even date to attorney J. C. Santiago Matos, of the law office of attorney Pedro M. Porrata at the latter's request.

Ponce, Puerto Rico, October 6, 1941.

A. MALDONADO,
Acting Clerk.

[Same Title.]

NOTICE OF APPEAL.

To the Clerk of this Honorable Court, to Attorneys JOSE SABATER *and* JOSE OLIVER SABATER, *Counsel for Defendant* MRS. ELVIRA OLIVIERI COMMINS, *and to Attorneys* LUIS LOPEZ DE VICTORIA *and* LEOPOLDO TORMES, *Counsel for the other Defendants:*

The plaintiff herein, feeling aggrieved by the judgment rendered by this Honorable Court on October 6, 1941,—

Hereby appeals from the same as to all its pronouncements to the Honorable Supreme Court of Puerto Rico, and you are hereby notified as required by law.

Ponce, Puerto Rico, October 27, 1941.

PEDRO M. PORRATA,
FELIX OCHOTECO, JR.,
Per: FELIX OCHOTECO, Jr.,
Counsel for Plaintiff.

Served with copy on this the 29th of October, 1941.

JOSE SABATER,
JOSE OLIVER SABATER,
Per: JOSE SABATER,
Counsel for Defendant
ELVIRA OLIVIERI COMMINS.

LUIS LOPEZ DE VICTORIA,
LEOPOLDO TORMES,
Per: LEOPOLDO TORMES,
LUIS LOPEZ DE VICTORIA,
Counsel for the other co-Defendants.

(There has been duly affixed hereto the filing seal of the court, evidencing that this notice was filed on October 30, 1941, at 3:20 P.M.)

[Same Title.]

CERTIFICATE OF SERVICE OF NOTICE.

I, J. C. Santiago Matos, having been duly sworn, do hereby state:

That the above is my name, that I am more than twenty-one years old, an attorney domiciled in Ponce, Puerto Rico, that I have been commissioned by counsel for the appearing plaintiff in the above-entitled case to serve counsel for defendants with copy of the enclosed notice of appeal. That pursuant thereto I per-

sonally delivered in their office in Yauco, Puerto Rico, at 9:00 A.M., October 30, 1941, a true and faithful copy of the enclosed notice of appeal to attorney Luis Lopez de Victoria. That I likewise served a copy of the said notice of appeal by delivering personally a true and faithful copy thereof in his Mayaguez, Puerto Rico, office to attorney Jose Sabater at 10:15 A.M. of October 30, 1941. That I likewise delivered a true and faithful copy of the aforesaid notice of appeal to attorney Leopoldo Tormes in his Ponce, Puerto Rico, office personally at 11:45 A.M. of October 30, 1941.

Ponce, Puerto Rico, October 30, 1941.

J. C. SANTIAGO MATOS, *Affiant.*

Sworn to and subscribed before me by Mr. J. C. Santiago Matos, whose personal characteristics are mentioned above and whom I personally know in Ponce, Puerto Rico, on this the 30th of October, 1941.

A. MALDONADO,
Clerk, District Court of Ponce.

(There has been affixed hereto and cancelled a $5.00 Internal Revenue stamp, and also the filing seal evidencing that this notice was filed on October 30, 1941 at 3:50 P.M.)

[Same Title.]

MOTION

REQUESTING THE TRANSCRIPT OF THE EVIDENCE IN THE PRESENT CASE.

To the Court:

Now comes the plaintiff herein through his undersigned attorney and respectfully requests:

For the purpose of perfecting the appeal taken in the present case from the judgment rendered therein, to order the reporter of this court who took down the notes in the case, to proceed to the preparation of the transcript of the evidence herein, which must

include all the evidence submitted and admitted, as well as all the proceedings, orders and rulings of the court, and the objections and exceptions from counsel for both sides, such transcript of the evidence to be prepared within the statutory time.

Ponce, Puerto Rico, November 1, 1941.

Respectfully,

PEDRO M. PORRATA.

(There is affixed hereto a filing seal evidencing that this notice was filed on November 1, 1941, at 8:25 A.M.)

[Same Title.]

ORDER.

Having considered the motion filed by plaintiff in the above-entitled case requesting the transcript of the evidence in the present case, the court grants said motion and orders therefore the reporter who took down the notes in the present case to proceed to the preparation within the statutory time of the transcript of the evidence in the present case, which shall contain all the evidence submitted and admitted by the court, as well as all the proceedings, orders and rulings of the court, and the objections and exceptions from counsel for both sides, for the purpose of sending up said transcript of the evidence to the Supreme Court of Puerto Rico, for the purpose of the appeal taken from the judgment rendered in this case, and said reporter shall prepare the said transcript within the time allowed by law for the purpose.

Ponce, Puerto Rico, November 1, 1941.

R. A. GADEA PICO,
District Judge.

Notified: 11:00 A.M., November 1, 1941.

JUSTO M. BODON, *Reporter.*

We, Pedro M. Porrata, one of the attorneys for plaintiff; Leopoldo Tormes, one of the attorneys for defendants Lluberas Passarell, and Jose S. Sabater, one of the attorneys for Mrs. Elvira Olivieri Commins, do hereby certify:

That the foregoing transcription is a true and faithful copy of their respective originals of the record in the present case on file in the District Court of Ponce, to which we refer.

In testimony whereof and for the purpose of the appeal taken by plaintiff Mario Mercado e Hijos to the Supreme Court of Puerto Rico, from the judgment rendered by this District Court of Ponce, we sign these presents in Ponce, Puerto Rico, February 12, 1942, stating that attorney Tormes as well as attorney Jose S. Sabater, respectively, received a copy of this transcript of record.

PEDRO M. PORRATA,
One of the Attorneys for Plaintiff.

LEOPOLDO TORMES,
One of the Attorneys for
Defendants LLUBERAS PASSARELL.

JOSE SABATER,
Per: LEOPOLDO TORMES,
One of the Attorneys for
Mrs. ELVIRA OLIVIERI COMMINS.

IN THE DISTRICT COURT FOR THE JUDICIAL DISTRICT OF PONCE, PUERTO RICO.

Civil 311. Rescission of sale.

Mario Mercado e Hijos, Plaintiff,

v.

Elvira Olivieri Commins, Manuel Francisco Lluberas Pasarell and his wife Hazell Kelly Lluberas, Antonia Lluberas Pasarell, Graciela Lluberas Pasarell and her husband Antonio Valenti Maestre, Celia Lluberas Pasarell and her husband Emilio Blasini Totti, and Raquel Lluberas Pasarell, Defendants.

Civil 312. Rescission of lease and other particulars.

Mario Mercado e Hijos, Plaintiff,

v.

Elvira Olivieri Commins and Emilio Blasini Totti, Defendants.

TRANSCRIPT OF THE EVIDENCE.

On November 13, 1939, this case was called for trial, the court being presided by its judge Hon. Domingo Sepulveda. The plaintiff appeared by its attorneys Felix Ochoteco, Jr., and Pedro M. Porrata, and the defendants by their attorneys Luis Lopez-de-Victoria, Leopoldo Tormes-Garcia and Jose O. Sabater.

Judge: Are the parties ready?

Attorney Ochoteco: We are ready.

Attorney Tormes: Ready.

Judge: Are these cases to be tried together or separately?

Attorney Ochoteco: Well, we have in mind, after the termination of the first case, to submit the second case upon additional evidence in regard to some facts.

Judge: Which is the title of the first case?

Clerk: Civil number 311, for rescission of sale and other particulars.

Judge: Who are the attorneys for the plaintiff?

Attorney Ochoteco: Pedro M. Porrata and Felix Ochoteco, Jr.

Judge: Who are the attorneys for the defendants?

Attorney Lopez-de-Victoria: In this case this attorney represents the Lluberas-Pasarell brothers and defendant Emilio Blasini, and states that attorney Leopoldo Tormes joins him as attorney of record for defendants.

Judge: Then, whom do attorneys Lopez-de-Victoria and Leopoldo Tormes represent?

Attorney Lopez-de-Victoria: The Lluberas-Pasarell brothers and the defendant Emilio Blasini.

Judge: And attorney Sabater?

Attorney Sabater: Attorney Jose Sabater represents the other defendant; he is absent from the Island of Puerto Rico; he is my father and I appear in his stead.

Judge: What is your name?

Attorney Sabater: Jose O. Sabater.

Judge: What does the O stand for?

Attorney Sabater: For Oliver. Oliver is a surname, but in my case it is a name; that is why I use the abbreviation O.

Judge: Whom do you represent?

Attorney Sabater: Defendant Elvira Olivieri Commins.

Judge: Then, are the parties ready for the trial of this case?

Attorney Tormes: We are ready.

Attorney Ochoteco: With reference to the plaintiff, we want to state that we have filed the proper motion for the summoning of the witness Rafael Barleta, which summons was delivered, from my best information, in the office of the marshal of this court. We would like to know if it has been served on Mr. Barleta.

Judge: Rafael Barleta, Mayaguez.

Marshal: The marshal's return is attached—

Judge: How many complaints are there?

Attorney Ochoteco: One complaint only.

Judge: Has not it been amended?

Attorney Ochoteco: No, sir.

Judge: And about the answer?

Attorney Ochoteco: One answer only. With regard to the defendants Lluberas there has been filed an answer, and another with regard to the defendant Elvira Olivieri Commins.

Judge: It seems that the clerk wishes to report on something. What is the clerk's report?

Clerk: This morning, Mr. Juan Morales, marshal of this court, received the return of the summons served on Mr. Emilio Blasini Totti, and of the summons served on Elvira Olivieri Commins and Francisco Manuel Lluberas.

Marshal: As to Mr. Barleta, the marshal of Mayaguez informs me that he could not be found in that city to be summoned to appear today.

Attorney Ochoteco: Let the marshal's statement be inserted in the record for future reference when pertinent.

Judge: Then, please inform the court the issue in the present case.

Attorney Ochoteco: In short, this is an action for rescission of contract of sale and other particulars, the essential facts alleged in the complaint being as follows: that plaintiff Mario Mercado e Hijos is an agricultural civil partnership, domiciled in Ponce, Puerto Rico, engaged in farming. That on certain occasion the defendant borrowed a sum of money from the plaintiff, and, as security for this loan, executed a voluntary mortgage for forty thousand dollars, represented by four mortgage promissory notes in favor of the plaintiff upon some undivided joint interest held by defendant at the time in two estates jointly owned by her and her sister. That in the mortgage deed there was inserted a special clause, on which this action is based, which literally transcribed reads as follows: "Notwithstanding the foregoing clause,—

Judge: Is that the seventh clause?

Attorney Ochoteco: "Seventh.—Option to Purchase and Sell and to Lease.—Notwithstanding the foregoing clause, the debtor,

as part of the consideration of this contract, agrees with the partnership Mario Mercado e Hijos, so long as the mortgage credit herein constituted is not paid, to grant it priority to purchase and sell or lease her undivided joint interests in the estates 'Indios' and 'Juanita' upon the same price and terms. To this effect, the debtor shall advise, unless such mortgage credit is paid, by registered letter to Mario Mercado e Hijos, of any offer of sale or lease made to her and said partnership shall be granted thirty days for accepting or refusing such offer and during said period the debtor cannot sell or lease to anybody else. Should there be a sale or lease in violation of this agreement, Mario Mercado e Hijos shall be entitled to repurchase from the purchaser or lessee, which right it can exercise for thirty days from the record of such sale or lease for subrogating itself to the place, degree or priority of the purchaser or lessee."

Further on it is alleged in the complaint that plaintiff Mario Mercado e Hijos conveyed to the heirs of Jose Tous Soto said mortgage credits for forty thousand dollars, reserving to itself the right of option to purchase and lease. It is also stated that afterwards defendant Elvira Olivieri Commins together with her sister, proceeded to the winding up of their joint ownership of the "Indios" and "Juanita" estates with the intervention of plaintiff Mario Mercado e Hijos.

That subsequently, it is alleged in the complaint, the defendants conspired among themselves for the purpose of defrauding, as they did defraud, the plaintiff of its right of priority to lease or to purchase the immovable to which the complaint refers, and proceeded as alleged in the complaint and finally deprived the plaintiff of its option to lease or purchase, without defendant Elvira Olivieri-Commins ever notifying Mario Mercado e Hijos that somebody was interested in leasing or purchasing the estates in question.

It is further alleged in the complaint that plaintiff would have been and is now ready to acquire for the same purchase price paid by the defendant purchasers and in equal terms the estates to

which the complaint refers. That to that effect plaintiff made a formal notarial demand of the defendant to accept the purchase money tendered, and it likewise demanded of the other defendants to respectively rescind the contract of sale and lease which had been executed, and both the former and the latter have refused, for which reason the plaintiff has filed this rescissory action praying for the nullity of all such proceedings as regards the sale and the lease, and, consequently, to subrogate the plaintiff to the rights of the defendant purchasers, and to the lessee who is likewise a defendant. Such is plaintiff's cause of action.

Judge: The answer?

Attorney Lopez-de-Victoria: Our contention—

Judge: The answer of Lluberas-Pasarell.

Attorney Lopez-de-Victoria: We admit the facts—

Judge: The answer of defendants Lluberas-Pasarell.

Attorney Lopez-de-Victoria: We admit the deed of mortgage, the personality, the existence of the estates and the existence in the deed of the clause read by attorney Ochoteco.

Judge: Then you accept averments 1, 2, 3, 4 and 5?

Attorney Lopez-de-Victoria: Yes, sir.

Judge: In every respect?

Attorney Lopez-de-Victoria: Yes, sir.

Judge: The first, second, third, fourth and fifth.

Attorney Lopez-de-Victoria: Averment 7 is also admitted.

Judge: Then the seventh and ninth are also admitted in the answer?

Attorney Lopez-de-Victoria: And the tenth and the thirteenth.

Judge: And is number 10 admitted?

Attorney Lopez-de-Victoria: Yes, sir.

Judge: And number 13?

Attorney Lopez-de-Victoria: Yes, sir, and the sixteenth.

Judge: Admitted.

Attorney Tormes: The facts denied are those as to any contract of sale having been agreed upon, perfected and executed prior to the cancellation of the mortgage. We have also denied that any

right of option to purchase and lease had been reserved to Mario Mercado e Hijos at the time of the assignment of the mortgage credit to the heirs of Tous-Soto.

Judge: The above refers to the answer of Lluberas-Pasarell.

Attorney Tormes: We also alleged some new matters of defense; special defenses that have been alleged against the complaint, and which read as follows:

"(1) That the option to purchase and lease stipulated in the seventh clause of mortgage deed No. 13 of March 23, 1932, executed before notary Fernando Zapater, acting in the place of notary Jose Tous-Soto, which clause seven is transcribed in the sixth paragraph of the complaint, is void for the following reasons:

"(a) Because the same amounts to an agreement whereby the mortgagee is empowered to adjudicate to itself the mortgagor's property by reason of the nonperformance of the contract secured by mortgage (sections 2 and 4 of Act No. 47 of April 13, 1916 to repress usury).

"(b) Because the same amounts to an agreement whereby the mortgagor is precluded from alienating or freely disposing of her property (subdivision 4 of section 107 of the Mortgage Law; *Van Syckel* v. *The Registrar of Property*, 3 P.R.R. 9; and *Clausells* v. *Registrar of Property*, 20 P.R.R. 298).

"(c) Because it conflicts with section 1412 of the Civil Code.

"(d) Because it tends to create a right that cannot be created, that is, a right of redemption to be enforced by someone who was not the vendor of the property but a mortgagee against a lessee.

"(2) Should said clause 7 of deed No. 13 of March 23, 1932, executed before notary Fernando Zapater-Martinez, acting in the place of notary Jose Tous-Soto, be valid, the right of redemption would be extinguished and prescribed by

reason of the lapse of more than four years after the same had been granted (sections 1397 and 1078 of the Civil Code).

"(3) Should plaintiff be entitled to an action of conventional redemption against defendants Lluberas-Pasarell, the plaintiff has failed to comply with the legal provisions regarding the very essential particular of the deposit in court, because although it deposited such amount in court, it did it separately, that is, within a different proceeding, that is, civil case number 310 of this court, instead of doing so within this same proceeding, case number 311, for which reason such deposit in court is not legally binding in the present case."

These are our special defenses.

Judge: What is the answer of Mrs. Elvira Olivieri Commins?

Attorney Sabater: As to the answer of our client, Mrs. Elvira Olivieri-Commins, we admit paragraphs 1, 2, 3, 4 and 5 of the complaint. We also admit paragraph 7 of the complaint; the averments of paragraph 9 and the averments of paragraph 10, and we refute the other paragraphs of the complaint as follows: the defendant admits that in mortgage deed number 13 of March 23, 1932, executed before notary Fernando Zapater, acting in the place of notary Jose Tous-Soto, there was inserted clause seven which is transcribed in paragraph 6 of the complaint; but it is alleged by this defendant that said clause was inserted by said plaintiff in said mortgage deed without this defendant being aware of its scope and meaning, to which she was compelled to submit due to her status as debtor at the time of the execution of said deed; that at the time of the execution of such mortgage deed and insertion of that clause, plaintiff Mario Mercado e Hijos was neither a co-owner of the mortgaged property nor a vendor thereof; that it was agreed between the plaintiff and this defendant that such agreement would be effective between the parties as long as the defendant was a mortgage debtor to Mario Mercado e Hijos and this defendant never consented to empower the plain-

tiff to appropriate to itself the property nor was it agreed or covenanted between the parties to forbid to defendant to dispose freely of her property.

This defendant denies in its entirety paragraph 8 of the complaint and alleges on the contrary that when making the conveyance referred to in said paragraph and in the deed whereby the same was carried out no reservation was made as regards such agreement and when this defendant was notified of such conveyance of mortgage credit she was not advised nor acquainted with nor notified in legal form or otherwise that plaintiff Mario Mercado e Hijos had reserved to itself such right of option to sell and repurchase, it being stated in said deed of conveyance of the said mortgage credit—which is deed number 33, executed in Ponce on May 9, 1933, before notary Fernando Zapater Martinez—that the grantor Mario Mercado e Hijos subrogated itself to the place of the grantee in the same degree and priority.

Regarding paragraph 11 of the complaint this defendant denies that on March 9, 1937, when this defendant sold the immovables referred to in such paragraph by deed number 40, executed in Mayaguez, on the same 9th of March, 1937, before notary Lopez-de-Victoria, there was still in force the option clause inserted in the mortgage deed of March 23, 1932; and in opposition to the averments of said paragraph she alleges that at that time the aforesaid mortgage credit had already been fully paid and cancelled, which payment and cancellation were effected pursuant to the judicial authorization from the District Court of Ponce, according to deed number 47, executed in Ponce before notary Fernando Zapater-Martinez on March 8, 1937.

Concerning said paragraph 11 of the complaint, this defendant denies to have conspired with the other defendants or with anybody else to defraud the plaintiff as to the agreement to repurchase referred to in said paragraph or for any other purpose or end; and this defendant further alleges in opposition to the allegations of said paragraph that when she sold to the other defendants, said option clause, which was forced by the plaintiff upon

this defendant according to the mortgage deed of March 23, 1932, and that it was illegal and improper, was cancelled because this defendant had fully paid the mortgage credit and for that reason this defendant had ceased to be indebted to the plaintiff, this defendant disposing of said properties after having fully paid the mortgage in which the said option clause had been forced by the plaintiff upon the defendant.

As regards paragraph 12 of the complaint, this defendant denies that on March 9, 1937, she and the other defendants embodied in a public deed, executed before notary Luis Lopez-de-Victoria, the contract of sale entered into between them and alleges on the contrary that the said sale was entered into and perfected on March 9, 1937, by deed number 40, executed in Mayaguez on the date above stated before the aforesaid notary when the mortgage credit constituted in favor of the plaintiff and conveyed by the latter to the heirs of Jose Tous-Soto had already been fully paid and cancelled.

Concerning paragraph 13 of the complaint this defendant admits that, having fully paid the mortgage credit referred to to the grantee thereof, she failed to advise the plaintiff regarding the sale made by her to the other defendants, to which reference is made in said paragraph; and she denies for lack of information and belief that the plaintiff partnership got information regarding the contract of sale on March 10, 1937, or at any other time.

Regarding paragraph 14 of the complaint this defendant denies the hypothetical allegation that the plaintiff, should it have been advised of the proposal to purchase, would have been willing to pay for the properties and the condominiums the amount paid to this defendant by the defendant purchasers and this defendant further alleges that prior to the sale made to the other defendants by this defendant, during the life of the mortgage in which the option clause was imposed on this defendant, the plaintiff refused on several occasions to buy from the defendant on the ground that no other purchaser would be forthcoming and that when the

mortgage credit became due it would compel this defendant to either sell or have the mortgage foreclosed.

As to paragraph 15 of the complaint this defendant denies that plaintiff is entitled to avail itself of the option to purchase set forth in the mortgage deed of March 23, 1932, executed before notary Fernando Zapater-Martinez, acting in the place of notary Jose Tous-Soto, for the reason that this defendant had fully paid said mortgage and had fully cancelled the same and being, after the cancellation, at liberty to dispose freely of her property.

Regarding paragraph 16 of the complaint this defendant admits that the deposit in court to which said paragraph refers was effected by the plaintiff in civil case number 310 of this court, but she alleges that such deposit in court is legally ineffective because the same was not effected in this action.

In answer to paragraph 17 of the complaint this defendant reproduces and makes part of the present answer all the denials and averments made by this defendant in this answer or that she may make in the future to the allegations of the plaintiff as set forth in the complaint in the said civil case number 310 of this court regarding deposit in court between these same parties.

Next follow the special defenses. This defendant alleges that clause seven of deed number 13 of March 23, 1932, executed before notary Fernando Zapater-Martinez, acting in the place of notary Jose Tous-Soto, was forced by the plaintiff upon the defendant while the latter was indebted to the plaintiff; that at the time said option to purchase and sell was inserted in the said mortgage deed, the plaintiff was not the vendor of the immovables but only a mortgagee; that plaintiff could not adjudicate to itself the property of this defendant in case of nonfulfillment of the contract secured by mortgage nor could it prevent this defendant from disposing of and alienating freely said property and that the option to repurchase or redeem was extinguished by the full payment by this defendant of the said mortgage credit and that the right of redemption was forfeited by plaintiff when conveying its mortgage credit to the heirs of Jose Tous-Soto and it moreover

had prescribed because four years had elapsed from the time the same was granted. (Sections 1397 and 1078 of the Civil Code.)

Judge: The court is fully informed. Then, these are the allegations of both parties. Are there any witnesses to be sworn in, witnesses for the plaintiff and for the defendants?

Attorney Tormes: Defendants' witnesses are: the defendants themselves, the clerk of the court, Mr. Lluberas and Mr. Blasini.

Attorney Ochoteco: Mrs. Elvira Olivieri—

Attorney Tormes: Dr. Blasini—

Judge: Let the witnesses, who are present, be sworn in. Please stand up.

[The clerk administers the oath to the witnesses for both parties who are present.]

Judge: Then, the hearing of the evidence will begin at two o'clock, at 2:30 this afternoon; and I say 2:30 because I have to dispatch some official business. At 2:30 sharp.

Attorney Tormes: Yes, sir.

Judge: Recess until this afternoon, at 2:30.

[Recess.]

AFTERNOON SESSION.

Judge: The session of the court is opened. As to the witnesses, is there any objection to their staying in the court room under oath? Any objection from the parties?

Attorney Ochoteco: None.

Attorney Tormes: Neither we.

Judge: Then such witnesses as are sworn in remain in the court room. Evidence for the plaintiff.

Attorney Ochoteco: As to record number 310, *in re* deposit, Mario Mercado e Hijos *v.* Elvira Olivieri-Commins, I have been informed that the same was here, but it is not here.

Judge: The clerk will inform.

Attorney Ochoteco: We might proceed with some other evidence.

Judge: Then, let some other evidence be introduced.

Attorney Ochoteco: We offer in evidence a certified copy of deed number 73, of August 20, 1936, executed before notary Tomas Paz-Ruiz, *in re* actual division of rural property, joint ownership and other particulars.

Attorney Tormes: We object, as irrelevant, immaterial and impertinent, on the ground that at the time of the execution of this deed there was no privity at all between defendant Elvira Olivieri-Commins or the other defendants Lluberas-Passarell and the plaintiff Mario Mercado e Hijos.

Judge: What deed is it?

Attorney Tormes: Deed of partition of property, actual division of rural property and property held in common.

Judge: What is its relevancy?

Attorney Ochoteco: Mrs. Elvira Olivieri-Commins owned jointly with her sister certain undivided interests. They then proceeded to dissolve the joint ownership with the intervention of the partnership Mario Mercado e Hijos, there being adjudicated to Mrs. Elvira Olivieri-Commins the immovable involved in this litigation, affected by the option to purchase and lease the subject matter of the action. What is involved is the ownership title of Mrs. Elvira Olivieri-Commins.

Mr. Tormes: When this deed was executed, on August 20, 1936, there was no relation between Elvira Olivieri-Commins and Mario Mercado e Hijos. According to a deed executed in May 1933, Mario Mercado e Hijos had assigned all its rights in the mortgage, without any reservation, to Mrs. Belen Gonzalez, widow of Tous-Soto, and her children. This is the objection.

[Attorney Tormes continues arguing.]

Judge: Are these properties the ones mentioned and referred to in this suit?

Attorney Ochoteco: The complaint in this case.

Judge: The purpose for which it is submitted, the court thinks—

Attorney Ochoteco: For two purposes: for the purpose of prov

ing the ownership title of Elvira Olivieri-Commins to the property involved, and of proving that notwithstanding the assignment made by Mario Mercado e Hijos to the heirs of Jose Tous-Soto, of the mortgage credit to which the complaint refers, Mario Mercado e Hijos continued being the holder of this option, and intervened as such holder.

Judge: The court admits it for the purpose for which it has been submitted, and the same is marked Plaintiff's Exhibit A.

Attorney Tormes: We take exception.

[The document submitted and admitted in evidence as Plaintiff's Exhibit A is faithfully and correctly transcribed, and is attached as a separate paper at the end of this transcript, marked "Plaintiff's Exhibit A".]

Attorney Ochoteco: Certified copy of deed number forty, of March 9, 1937, before notary Luis Lopez-de-Victoria, on partial cancellation of mortgage, sale of rural property and modification of mortgage clauses.

Judge: Executed between whom?

Attorney Ochoteco: Between Elvira Olivieri-Commins and the spouses Manuel Francisco Lluberas-Pasarell and Hazel Kelly Lluberas.

Attorney Tormes: No objection.

Judge: Admitted, it is marked Plaintiff's Exhibit B.

[The document submitted and admitted in evidence as Plaintiff's Exhibit B is faithfully and correctly transcribed and is attached as a separate paper at the end of this transcript, and marked "Plaintiff's Exhibit B".]

Attorney Sabater: With reference to Plaintiff's Exhibit A the defendant Elvira Olivieri Commins takes exception to the ruling of the court, and with reference to Exhibit B there is no objection.

Judge: Let it be so recorded.

Attorney Ochoteco: We submit in evidence certified copy of deed number ten of July 7, 1935, *in re* extension of partnership.

Attorney Tormes: Examined, and no objection from the defendant.

Judge: The other party.

Attorney Sabater: No objection.

Judge: Then let it be admitted and marked Plaintiff's Exhibit C.

[The document submitted and admitted in evidence as Plaintiff's Exhibit C is faithfully and correctly copied, and is attached as a separate paper at the end of this transcript and marked "Plaintiff's Exhibit C".]

Attorney Ochoteco: Certificate of the registrar of property of Ponce of January 13, 1938.

Judge: Referring to what?

Attorney Ochoteco: In connection with the deal between Mario Mercado e Hijos and Elvira Olivieri-Commins concerning this property, and especially, moreover, with regard to clause 7 of the contract of mortgage as to the fact that it was expressly recorded in the Registry of Property.

Attorney Tormes: Although it is redundant—

Judge: What is your purpose in submitting it?

Attorney Tormes: We have no objection.

Attorney Sabater: No objection.

Judge: Admitted and let it be marked Plaintiff's Exhibit D.

[The paper submitted and admitted in evidence as Plaintiff's Exhibit D, is faithfully and correctly transcribed and attached as a separate paper at the end of this transcript, marked "Plaintiff's Exhibit D".]

Attorney Ochoteco: Certified copy of deed number 72 of March 31, 1937, executed before notary Fernando Zapater-Martinez, on ratification by Belen G., widow of Tous-Soto, and others.

Attorney Tormes: Examined by the attorney representing Lluberas and Blasini, and we reserve to ourselves the right to object. We object to the admission of this deed for the following reason: Because in this deed there appear a minor of seventeen years of age and an incapacitated one called Jose Tous-Gonzalez. The former, seventeen years old, represented by her mother with *patria potestas* over him and over the incapacitated one. When the

ratification was made in this deed authorization from this court had not been previously obtained, and it is a ratification which the court is without jurisdiction to grant, as property of minors is involved.

[Attorney Tormes argues extensively his objection, citing the case of *F. Zayas, S. en C.* v. *Torres,* 51 P.R.R. 772.]

Judge: What page?

Attorney Tormes: Page 772 *et seq.* It happens that in this case the ratification was effected without first obtaining authorization from the court, real rights on real property being involved, requiring the judicial authorization of the court. On the other hand, this deed cannot prejudice third persons, nor does it appear that the same has been entered in the Registry of Property. According to the provisions of the Mortgage Law, it cannot be admitted in evidence without the above requisites. Moreover, by this deed it has been sought to put life into something that was already extinguished. The deed was executed on March 31, 1937, in reference to a mortgage credit that had been held by Mario Mercado e Hijos about the year 1933, and that on that date the same had been assigned, without any reservation at all, to Belen Gonzalez, widow of Tous-Soto and her children, which included a minor and an incapacitated one. By this deed reference is made, or modification or explanation attempted as regards such mortgage credit, which had been totally cancelled by a deed executed in Ponce on March 8, 1937. We think that such procedure is contrary to the provisions of Section 1187 of the Revised Civil Code. Because, moreover, this deed constitutes *res inter alios acta* between Mario Mercado e Hijos and the widow of Tous-Soto. Because Mario Mercado e Hijos was "in estoppel by conduct".

[Attorney Tormes argues extensively on his objection.]

In this way, such evidence cannot prejudice a third person, and it is irrelevant, immaterial and inadmissible, and cannot operate against any of the defendants. This is the objection of defendants Lluberas-Blasini.

Attorney Sabater: This party objects to the admission of such

deed of ratification for the same reasons advanced by my colleague attorney Tormes, and for the reason that a mortgage credit could not be split into a mortgage credit, an option and a right of redemption clause.

[Attorney Sabater discusses the point.]

Judge: The other party?

Attorney Ochoteco: Please the court, this objection, perhaps not so extensively expressed, was duly raised by our colleague attorney Lopez-de-Victoria during the trial of the ejectment suit before this Honorable Court. It was offered in evidence—

Judge: This same deed?

Attorney Ochoteco: This one. The record says: "Certified copy of deed number 72 of March 31, 1937, executed before notary Fernando Zapater, *in re* ratification, by Belen, widow of Tous-Soto, and others." It is the same deed.

Judge: Was it then submitted by defendant?

Attorney Ochoteco: Yes, sir. We were the defendant in the ejectment suit. The then plaintiff, and now defendant, says:

> "Please the court, for the same reasons adduced in our first discussion, we object to the admission of this deed, and, besides, because this is a deed in which terms of a previous written contract are explained; it is a deed executed on March 31, 1937, without it being notified, a transfer of a mortgage credit being involved, to the original mortgage debtor; because it does not appear from this deed that the notary before whom it was executed had officially entered on his protocol the deed to which this ratification refers, the verified copy thereof and the notice of the assignment of the mortgage credit. This deed explains the assignment of the mortgage credit to the Heirs of Tous Soto. That assignment was fully and absolutely made, as appears from the same deed already admitted in evidence, and, afterwards, on March 31, 1937, Belen Tous-Soto, by herself and in representation of her minor children, and Mario Mercado e Hijos, explained

and ratified that Mario Mercado e Hijos reserved a right of option. We oppose the admission of this instrument because in its execution section 1187 of the Civil Code of Puerto Rico (1911 ed.), as well as section 1173 of the Civil Code of 1930, have been violated. It could not operate in any way against third parties. This was the objection.

"Judge: That goes to the scope of the evidence, and will be proven from the evidence on its merits when the parties argue the case in their briefs. Admitted and marked Defendant's Exhibit F."

This same argument of the distinguished colleague appears before at length in the record. The court will see, and we respectfully allege, save a different opinion of the court to the contrary, that the jurisprudence invoked by my colleague is not applicable.

[Attorney Ochoteco argues extensively.

[Attorney Tormes argues also.]

Judge: Here mention has been made of the judicial authorization proceeding.

Attorney Ochoteco: It will be duly offered in evidence.

Judge: It would be well, of course,—

Attorney Ochoteco: We had in mind to move the court for leave to withdraw our offer to submit the deed, in order to submit first the record.

Judge: Motion granted for the present. When we have both of them on view, we may judge. For the present then such paper is withdrawn. Let us proceed with the evidence.

Attorney Ochoteco: We are going to make a joint proposal, with objection to the exhibits being marked differently, because they mutually supplement each other. Deed number 72 executed on March 31, 1937, before notary Fernando Zapater-Martinez by Mrs. Belen G., widow of Tous-Soto, and others.

Judge: Is that the same deed?

Attorney Ochoteco: Yes, sir. And the record of this court

civil number 299, *in re* ratification of deed, Belen Gonzalez-Salicrup, widow of Tous, et al.—

Judge: What number?

Attorney Ochoteco: Two hundred ninety-nine. For the purpose of the record, does my colleague accept the authenticity of the record?

Attorney Tormes: This defendant admits that it is the same action, and that it is under the custody of the clerk of the court.

Attorney Ochoteco: We submit these papers in evidence.

Attorney Tormes: As regards the deed, no objection.

Judge: Is that the record?

Attorney Tormes: As regards the record, we are gong to object. We are going to object to the admission of record number 299, for the following ground, among others: because the contents of this record and the order made thereon, which tended to ratify deed number 72 of March 31, 1937, executed before notary Zapater, is the result of a conspiracy between the parties, who apparently contracted or appeared to be contracting in said deed. Section 67, of the Law of Evidence, is to the effect that any judicial record may be impeached by evidence or want of jurisdiction in the court or judicial officer, of collusion between parties or of fraud in the party offering the record in respect to the proceedings.

[Attorney Tormes argues extensively on his objection, and cites 39 P.R.R. 584; 35 P.R.R. 811; 27 P.R.R. 315; and 30 P.R.R. 209.]

We are of the opinion, from the above grounds, that neither the deed nor the record constitutes any legal evidence that might affect the rights of the defendants Lluberas Pasarell Blasini and Mrs. Elvira Olivieri Commins, and we have argued so long because these instruments constitute the nerve of the action.

Judge: The other party?

Attorney Ochoteco: Please the court, my colleague is making statements about the abstract law, with which we concur. Now we understand that our distinguished colleague makes the same mistake frequently made by us attorneys, and such mistake is that

in objecting to the admissibility of a paper we take for granted and as proven facts which have not yet been proven, and it is sought by means of an objection to have the presiding judge pass upon the merits of the litigation.

[Attorney Ochoteco argues the point.]

Upon these statements and unless our colleague attorney Porrata wishes to make further statements, we submit the point to the court.

Judge: Are you both representing the same plaintiff?

Attorney Ochoteco: Yes, sir.

Attorney Sabater: As far as Mrs. Elvira Olivieri Commins is concerned, we make the same objection that was made by my colleague Tormes, and let the same be recorded.

Judge: Of course this court has given so much attention to the arguments from both sides, because both sides have stated that these papers constitute the nerve of the litigation. The nerve does not mean the whole muscular system, but nerve means the main part, the part that drives. Without nerves no organism can live. That is why the court has given so much attention to the arguments. The court might have passed upon the question from the start, but has heard with much pleasure such enlightening arguments; but there is a point here, on which both parties agree, and it is that if this evidence was not admitted now, the suit could not stand. But there is another evidence stated by the parties, so that these papers are not the only point of evidence. If this were the last point the court would then stop there and say: "We are going to pass upon this question in accordance with this instrument, which is the nerve", but as there is some other documentary and oral evidence which has been sworn in without being heard, the court is of the opinion that it would not be wise to attempt to pass upon this question now, although it has heard the parties and some jurisprudence and sections of the law have been cited. These papers are links in the chain of evidence, and according to the theory advanced by the plaintiff when stating his case this morning, there is something more than

these papers that must be submitted to the consideration of the court. There will also be some evidence from the defendants. What the court means briefly is that for the better ends of justice and the best application of the law and the procedure and less risk of mistakes, the best way would be and is for the court to admit this evidence in order to accord it any probatory value to which it may be entitled, together with the rest of the evidence from both sides. Upon the submission of all the elements of evidence brought by both sides the court then, having all the elements before it, shall decide. For this reason the court decides as follows: the court admits the evidence, these papers, that is, deed number 72 and the record of the court, regarding judicial authorization, number 299, to accord to it any probatory value that it may have in connection with the remainder of the evidence as a whole in this case, to be submitted by both sides. Admitted, and respectively marked letters E and F of the plaintiff. Admitted.

[The papers submitted and admitted in evidence as Exhibits E and F of Plaintiff, are faithfully and correctly transcribed and are attached as separate papers to this transcript as "Exhibit E" and "Exhibit F of the Plaintiff".]

Mr. Tormes: We take exception in behalf of defendants Llubéras-Blasini on the same grounds, *supra*.

Mr. Sabater: Exception is taken by defendant Mrs. Elvira Olivieri Commins on the same grounds stated by the attorney for the other defendants.

Judge: The court enlarges its order in the sense that it does not deprive any of the parties, when the time comes to settle this case on its merits, from insisting again on the value that might be attached to these papers; that the court will pass necessarily on this point, but it shall be when weighing the evidence as a whole.

Mr. Tormes: We take exception.

Judge: I say this so that in case some briefs are filed these questions should be treated, bearing in mind the jurisprudence, the law and the doctrine that each party may deem necessary. It

is a notice and the question in this connection is not closed. This evidence for the plaintiff is not definitely closed.

Attorney Ochoteco: We proceed to offer in evidence certified copy of deed number 30, which is a voluntary mortgage of Mrs. Elvira Olivieri-Commins and Mr. Manuel Francisco Lluberas Pasarell, executed before notary Luis Lopez-de-Victoria.

Mr. Tormes: Said deed has been examined by defendants Lluberas and Blasini.

Attorney Sabater: No objection from us.

Attorney Tormes: No objection.

Judge: It is admitted and marked Exhibit G.

[The paper submitted and admitted in evidence as Exhibit G of Plaintiff is faithfully and correctly transcribed and is attached as a separate paper at the end of this transcript as "Exhibit G of the Plaintiff."]

Attorney Ochoteco: We miss the notice of assignment. Was this notice submitted as evidence at the trial of the ejectment proceeding?

Attorney Tormes: I think so.

Judge: Then let them look for it in the record of the ejectment proceedings. The clerk informs that the search of that notice is proceeding with in the office of the clerk. Let us hear some other evidence, if any.

Attorney Ochoteco: Yes, sir. We submit in evidence receipt number 702 issued by the clerk of this court on April 8, 1937, in favor of Mario Mercado e Hijos for $45,359.50, in connection with civil case number 310 *in re* depositing of money in court.

Attorney Tormes: Notice is taken of the receipt.

Attorney Sabater: The same.

Attorney Tormes: I am going to object because it is irrelevant immaterial, redundant and unnecessary matter for the purpose of the question, and moreover because the saffne is self-serving evidence. It is an act of Mario Mercado e Hijos depositing 45,000 and odd dollars in this court without being entitled thereto. That is the objection.

Attorney Sabater: We object to this paper on the ground that it is sought to introduce this paper in evidence in order to bring later on and submit the action *in re* deposit of money in court, because it is our opinion that the action *in re* deposit of money in court and the tender of such amount ought to have been made within this action, *in re* rescission of contract.

Attorney Ochoteco: We want to state that this receipt is only submitted by us for the purpose of proving that we deposited at the time referred to in the receipt the sum of 45,000 and odd dollars. We have not yet submitted the proceedings *in re* deposit of money in court, and it seems that the objection from my colleague covers not only the action *in re* deposit of money in court but the receipt itself.

Judge: Both things seem to be mutually connected, but the record of the suit is not here yet. This other question is also connected with the former, that is why the court admits it so as to have an opportunity to more carefully consider this point. It is admitted and will be accorded any probatory value that it may have.

Attorney Tormes: We take exception.

Judge: Let it be marked Exhibit H.

[The paper submitted and admitted in evidence as Exhibit H of the Plaintiff, is faithfully and correctly transcribed and is attached at the end of this transcript as "Exhibit H of the Plaintiff."]

Attorney Sabater: We take exception.

Judge: Let it be recorded and marked Exhibit H of the Plaintiff.

Attorney Ochoteco: We submit in evidence verified copy of deed number 47 of March 8, 1937, executed before notary Fernando Zapater-Martinez, *in re* cancellation of mortgage, executed by Mrs. Belen Gonzalez-Salicrup, widow of Tous-Soto, et al.

Judge: The other party?

Attorney Tormes: Notice taken.

Attorney Sabater: Notice taken of the paper.

Judge: Any objection?

Attorney Tormes: What is the number of this deed?

Attorney Ochoteco: Number 47, of March 8, 1937, executed before Fernando Zapater-Martinez.

Attorney Tormes: Our only objection is that it contains no mention of its entry in the Registry of Property.

Judge: Then the court admits it—

Attorney Sabater: No objection.

Judge: The same is admitted and let it be marked Exhibit I of Plaintiff. It is admitted, and proceed.

[The paper submitted and admitted in evidence as Exhibit I of the Plaintiff is faithfully and correctly transcribed and is attached as a separate paper as "Exhibit I of Plaintiff."]

Attorney Ochoteco: I move the court for a five minute recess so that we might examine some other evidence.

[Recess of the court.]

Judge: The session of the court is opened. Let us proceed with the case and the submission of evidence.

Attorney: We will proceed with the submission of documentary evidence. We submit in evidence a verified copy of deed number 13 of March 23, 1932, executed before notary Fernando Zapater-Martinez, acting in the place of notary Jose Tous-Soto, *in re* voluntary mortgage, executed between Mrs. Elvira Olivieri-Commins and Mr. Arturo Cortes-Vals.

Attorney Tormes: I think that a deed in that respect has already been submitted.

Attorney Ochoteco: No.

Attorney Sabater: No objection.

Judge: No objection?

Attorney Tormes: None.

Judge: Let it be marked Exhibit J of Plaintiff.

[The paper submitted and admitted in evidence as Exhibit J of Plaintiff is faithfully and correctly transcribed and is attached at the end of this transcript as "Exhibit J of Plaintiff".]

Attorney Ochoteco: It is attached to record number 310, *in re* deposit of money in this court.

Judge: Is it in the record of the proceeding *in re* deposit of money in court?

Attorney Ochoteco: We intend to submit part of that record in evidence.

Judge: What is the number of that record?

Attorney Ochoteco: 310. We submit in evidence a verified copy of deed number 7 of April 6, 1937, executed before notary Pedro M. Porrata, *in re:* the demand, attached to record number 310 itself, *in re* deposit of money in court.

Attorney Tormes: The paper is examined and I will object to it.

Attorney Sabater: We also object.

Attorney Tormes: We object to the submission of this paper because it is immaterial and irrelevant as evidence for the purpose of the action prosecuted by the plaintiff and because it constitutes self-serving evidence, and these are our grounds for the present.

Judge: The other defendant.

Attorney Sabater: We object on the same grounds.

Judge: The court admits the same and will give it any value that it may have in connection with the remaining evidence and is marked Exhibit K of Plaintiff.

Attorney Tormes: Exception taken.

Attorney Sabater: Exception taken.

[The paper submitted and admitted in evidence as Exhibit K of the Plaintiff, is faithfully and correctly transcribed and is attached at the end of this transcript as "Exhibit K of the Plaintiff".]

Attorney Ochoteco: We submit in evidence the aforesaid record civil number 310 of this court, *Mario Mercado e Hijos* v. *Elvira Olivieri-Commins, in re* deposit of money in court.

Judge: Is that the record that was being searched?

Attorney Ochoteco: Yes, sir. The following proceedings from record 310—

Judge: Of record 310?

Attorney Ochoteco: Yes, sir. Original complaint and amended complaint. For the purpose of the record, would the defendant object to admit that the plaintiff has entered an appearance, that it has appeared in the case?

Attorney Tormes: If that is a fact, how can we refute it? We would like the whole record to be submitted so that the judge might have everything before him.

Judge: The complaint, the original complaint is admitted and is marked—

Attorney Tormes: I object.

Attorney Ochoteco: The receipt of the deposit of money in court was submitted in evidence.

Judge: It was admitted as Exhibit H.

Attorney Sabater: I think a small doubt existed.

Judge: It was admitted and the statement from the court was in connection with the deposit of money in court.

Attorney Sabater: We are going to object to the admission of the record of the proceeding of deposit of money in court.

Judge: There is a complaint and an amended complaint.

Attorney Sabater: We object to the admission in evidence of the complaint and of the amended complaint in civil case number 310, *in re* deposit of money in court, on the following ground: our Code of Civil Procedure in force does not contain any provision authorizing complaints or ordinary actions *in re* deposit of money in court. The deposit of money in court is an *ex parte* proceeding and no complaints in deposit of money in court proceeding of a contentious nature can be filed.

The Supreme Court of Puerto Rico has held repeatedly that where there is no proceeding or remedy in the Code of Civil Procedure, resort may be had to the Spanish Code of Civil Procedure, that is, the Spanish law in force in Puerto Rico. This is why, in our opinion, there should not be admitted in evidence regarding

the deposit of money in court proceeding the complaint and the amended complaint submitted by my colleague.

[Attorney Sabater argues at length on his objection.]

Judge: Cite legal provisions.

Attorney Sabater: Our objection rests on the provisions of the Spanish Law of Civil Procedure, title 19, dealing with redemption, and Section 1618 *et seq.*, treating of the redemption proceeding, with which the complaint and the amended complaint are concerned, sought to be admitted in evidence by the attorney for the plaintiff.

[Attorney Sabater argues the point.]

Judge: The court understands very well the objection made, but the point is that two legal systems are facing each other, that of the Spanish Law of Civil Procedure and the American system of procedure in force in our Code of Civil Procedure. In the Spanish Law of Civil Procedure there was a proceeding for each action with the steps and rules respectively set out, and according to our procedure an ordinary remedy and even extraordinary remedies may be prosecuted in an ordinary action. This is why the courts cannot determine whether the provisions of the Spanish civil procedure shall prevail, and for said reasons the court admits the evidence in question.

Attorney Sabater: We take exception.

Judge: Let the complaint be marked Exhibit L and the amended complaint ~~Exhibit M.~~

Attorney Sabater: We take exception in behalf of the party represented by us.

Attorney Tormes: Then, will they be two exhibits, because they are not separated?

Judge: Yes.

Attorney Tormes: We take exception on grounds similar to those stated by our colleague in taking objection.

Judge: Let it be so recorded. Any other documentary evidence?

Attorney Ochoteco: This is all the evidence which we submit

for the present. We will submit the other documentary evidence during the testimony of the witnesses.

Now, I think, with due respect to the better judgment of the court, that it is now 4:50 P.M., and as the examination of the next witness would be somewhat long, and would have to be interrupted, I would ask the court to order a recess.

Judge: The court will adjourn to tomorrow at nine A.M. The court is adjourned.

[Recess of the court.]

SESSION OF NOVEMBER 14, 1939.

[The clerk of the court reads the minutes of the preceding session.]

Judge: Minutes approved. The minutes of the preceding session is read, approved and signed. The hearing of civil case number 311, *Mario Mercado e Hijos* v. *Elviro Olivieri Commins, in re* rescission of contract, is proceeded with. Plaintiff's evidence.

Attorney Ochoteco: For the purpose of the record, we would like the marshal to inform us about the return of the summons to be served on Mr. Rafael Barleta, delivered to said officer.

Marshal: On Tuesday of last week I went to Yauco to summons Mrs. Elvira Olivieri-Commins, Mr. Manuel Francisco Lluberas and Mr. Emilio Blasini, and once there I requested the marshal to serve the summons on Mr. Barletta, but failed to find him at home because he was abroad on the Island, and I then left the summons with him. I called again and I was told that they had been unable to locate Mr. Barletta, and today the summons was returned to me without being served because they had not been able to locate Mr. Barletta.

Judge: Was it returned?

Marshal: With the following letter:

"My dear Friend Morales:

"It has been impossible to locate Barletta. We have been taking steps until now, 8:45, P.M., Saturday.

"On Monday I will return to you the stamps left by you with us.

"Yours sincerely,

"J. M. FREYRE."

Judge: Who is he?

Marshal: Deputy marshal of the District Court of Mayaguez.

Attorney Ochoteco: Does Mr. Barletta live in Mayaguez? *A.* Yes, sir.

Q. Does the marshal know it of his own knowledge? *A.* Yes, sir.

Attorney Ochoteco: I will ask the court to issue the proper writ directed to the marshal of the District Court of Malaguez to serve the summons in question. As the present proceedings will surely last the whole of this day, we would like to locate Mr. Barletta, if possible.

Judge: What is it you actually want?

Attorney Ochoteco: That instructions be given to the marshal of the District Court of Mayaguez to proceed to summon Mr. Rafael Barletta to appear herein and take the stand for the plaintiff, the plaintiff being willing to pay for any disbursements made by Mr. Barletta that might be authorized by law.

Judge: Then let the marshal proceed accordingly. Let the summons be issued for his appearance today before three P.M.

Attorney Ochoteco: And if that cannot be, for tomorrow at nine A.M.

Judge: Could not we close today?

Attorney Ochoteco: Hardly.

Judge: Then let us be short.

Attorney Ochoteco: Mrs.—

SWORN TESTIMONY OF ELVIRA OLIVIERI-COMMINS.

Judge: Do you feel comfortable there?

Mrs. Olivieri: Very well, thank you.

Judge: Listen well to the questions, be calm and answer at your ease.

Attorney Ochoteco: What is your name?

Mrs. Olivieri: Elvira Olivieri.

Q. Where do you live? *A.* In Yauco.

Q. Since when do you live in Yauco? *A.* Since the month of March, 1938.

Q. Prior to the month of March, 1938, where did you live? *A.* In Mayaguez.

Attorney Ochoteco: With whom?

Mrs. Olivieri: With my daughter, Eurosina Blasini-de-Barletta.

Q. Single or married? *A.* Married to Mr. Barletta.

Judge: Did you reside in Mayaguez? *A.* Yes, sir.

Attorney Ochoteco: When was it that you moved from Mayaguez to live in Yauco? *A.* In March, 1938.

Q. And you said that you lived in Mayaguez together with your daughter? *A.* Yes, sir.

Q. What did you say her name is? *A.* Eurosina Blasini-de-Barletta, married to Rafael Barletta.

Q. How long did Rafael Barletta and his wife reside— *A.* Almost twenty-four years between the United States and Mayaguez.

Judge: What is the name of Mr. Barletta?

Attorney Ochoteco: Rafael. How long have you known Mr. Barletta?

Mrs. Olivieri: Ever since he met and married my daughter.

Attorney Ochoteco: More or less, how long since your daughter was married? *A.* About— I do not remember quite well. About thirty years more or less. Perhaps that long.

Q. Do you know, or have you had any dealings with, Mario Mercado e Hijos? *A.* Yes, sir.

Q. How long? *A.* About 35 or 56 [*sic*] years.

Q. What kind of dealings? *A.* Matter of properties that I had leased to them.

Q. Properties belonging to you? *A.* Yes, sir. First to my mother and afterwards to me.

Q. And have you had them leased? *A.* Yes, sir.

Q. And approximately how long has it been since then? *A.* Thirty-five to thirty-six years.

Q. Have you had any dealings with that firm? *A.* Yes, sir.

Attorney Ochoteco: Do you know Mr. Peralta?

Mrs. Olivieri: I know him.

Q. Do you know what position he holds with the firm Mario Mercado e Hijos? *A.* Manager.

Q. Please examine this document.

[The witness examines a paper shown her by Mr. Ochoteco.]

Attorney Tormes: Paper examined.

Attorney Ochoteco: If you wish I can read it to you:

"January 23, 1936. Mario Mercado e Hijos, Guayanilla. Received offers through my son-in-law. Will answer next week through Rafael.

(signed) ELVIRA OLIVIERI-COMMINS."

A. Yes, sir.

Q. What kind of paper is this? *A.* This is a telegram; as we were about to lease and sell to that firm—

Q. Did you wire it to Mario Mercado e Hijos? *A.* My son-in-law did, he was in charge; I told him to submit the proposals.

Q. Please speak a little louder, so that the stenographer can hear you well and take down all your words.

Mrs. Olivieri: The proposals were from me.

Attorney Ochoteco: Then the proposal came from you? *A.* Yes, sir, through my son-in-law.

Q. Who is your son-in-law? *A.* Rafael Barletta, with whom I sent the note. He took it, and if the answer was agreeable to me, then I might accept, but if the answer from Rufina did not suit me, I would say: "This does not suit me." He had no power to decide; I was the owner, the one who disposed and ordered and did everything. Do you understand me?

Q. Do you wish to say anything further? *A.* That is all.

Q. I am going to beg the lady hereafter to restrict her answers to the questions put by me. Why did you delegate Mr. Rafael

Barletta? *A.* Because my children were busy in their professional occupations. He was the one who could help me in this business, but I never authorized him to do anything further.

Q. I am not talking about any power. My question is why did you avail yourself of Mr. Rafael Barletta?

Mrs. Olivieri: Because at that time I trusted him to do any business that I might entrust him with.

Attorney Ochoteco: What business? *A.* The proposal to lease and sell made by me to Mario Mercado e Hijos.

Q. Do you refer to the proposal to sell and lease your property to Mario Mercado e Hijos? *A.* Yes, sir.

Q. This is what matters us. *A.* And that is what I care to answer.

Q. Did you ever expressly authorize Mr. Barletta to discuss the lease or sale of your properties "Indios" and "Juanita"?

Attorney Tormes: She answered to that. The direct examination would never come to an end.

Attorney Ochoteco: May it please the court. Now I am going to make some statements covering all the lady's testimony. The lady is my witness, and may, of course, be examined with the consent of the defendant, and although she is defendant, she is under our protection, if any is needed. The question made by us to her is specific as regards certain parcels. The former ones were general questions. Let us take up now, specifically the parcel known as "Juanita".

Judge: The court understands. Such specific question is admitted.

Attorney Ochoteco: What does the lady answer?

[The stenographer repeats the question which gave rise to the above incident.]

Stenographer [reading the question]:

"Did you ever expressly authorize Mr. Barletta to discuss the lease or sale of your properties 'Indios' and 'Juanita'?"

Mrs. Olivieri: Yes, sir.

Attorney Ochoteco: When? *A.* I do not remember when.

Q. Please try to refresh your memory and see if you can remember when. *A.* May be it was in 1936, but I do not remember the day and the hour.

Q. I am not asking you about either the day or the hour. *A.* In 1936, but I cannot tell you whether it was in January or February. I do not remember. About the date of the telegram—I was going to say to you—

Judge: She says that in 1936.

Attorney Ochoteco: The telegram is dated January 23, 1936.

Mrs. Olivieri: On several occasions I myself wrote to Central Rufina.

Q. In order to gain time, please restrict your answers to my questions. *A.* I am not well posted on many things.

Q. Was it in January 1936 when you empowered him? *A.* Empower, not. I authorized him: "Go to Rufina and make this proposal." I gave him a memorandum. This was about January, 1936.

Q. Right after this telegram? *A.* Yes, sir.

Q. We submit in evidence the telegram.

Attorney Tormes: No objection.

Mrs. Olivieri: I wish to see the telegram.

Attorney Ochoteco: I pray the lady to confine herself only to answer the questions put by me.

Judge: Please wait until the telegram is produced, so you can talk afterwards, because we have to speak slowly and only one person must speak at a time. What does the telegram say?

Attorney Ochoteco: A telegram of January 23, 1936, from Elvira Olivieri-Commins to Mario Mercado e Hijos, identified by her.

Attorney Tormes: No objection.

Judge: Admitted and marked Exhibit N.

[The document submitted and admitted in evidence as Plaintiff's Exhibit N is faithfully and correctly transcribed,

and attached as a separate paper at the end of this transcript, marked "Plaintiff's Exhibit N".]

Attorney Ochoteco: Do you know if Mr. Barletta had interviews with Mario Mercado e Hijos in connection with the lease of the parcels above mentioned?

Mrs. Olivieri: I do not think so prior to this telegram.

Q. Do you know if Mr. Barletta had any interview with Mario Mercado e Hijos in connection with that errand? *A.* I think so.

Q. Do you know that of your own knowledge?

Mrs. Olivieri: I think so, because once he brought me a note from the Central Rufina, and I think I have it.

Attorney Ochoteco: Did he bring you certain details about the Central Rufina, which showed that he had been there? *A.* Yes, sir.

Q. How many proposals, if any, from Mario Mercado e Hijos did Mr. Barletta bring you, in connection with the lease or sale of these properties? *A.* The only proposal is the one I have at home; that is the only one I remember of, where they told me—

Q. Please do not say what the paper said. *A.* I have to explain. They were proposals which I did not accept.

Judge: Do you say you have one? *A.* One, and as to the others I do not remember whether I tore them.

Attorney Ochoteco: So that of your own knowledge, you remember that at least one proposal reached you? *A.* Yes, sir.

Q. In which Mario Mercado e Hijos wanted to lease or purchase those parcels?

Mrs. Olivieri: Yes, sir.

Attorney Ochoteco: Do not you remember whether there were more than one proposal? *A.* They were three proposals.

Q. Were they three? *A.* Yes, sir.

Q. Were these three written or verbal proposals? *A.* This is the only one I have at home.

Q. Were the others verbally made? *A.* Yes, sir.

Q. Through Mr. Barletta? *A.* Yes, sir.

Q. Were such proposals for the lease and sale of the parcels,

or for the sale only, or for the lease only? *A.* For the lease, and I do not remember whether they were for the sale.

Q. Please try to remember. *A.* For the sale also.

Q. For the sale also? *A.* Yes, sir. I remember that I verbally asked Rufina (and I must say it, so that you can know it) forty-five thousand dollars as the purchase price; I asked that for the lands that Lluberas purchased afterwards, and they offered $28,000 and four hundred which (I am not sure, as my memory fails me) I owed on such land, and I said: "I cannot sell my lands at such a bargain price." I told my son-in-law: "Please go and tell them that I refuse the offer."

Attorney Ochoteco: You mean that Messrs. Lluberas offered you $45,000?

Mrs. Olivieri: No, I could not say that. At that time I had not talked with the Lluberas.

Q. You say that Mario Mercado e Hijos offered to purchase for twenty-thousand odd dollars? *A.* Twenty-eight thousand dollars for the whole land, for land that comprised one hundred thirty-six cuerdas of sugar cane, and four or five hundred of pastures.

Q. And you did not accept that offer? *A.* No, sir.

Q. Because it was low? *A.* Yes, sir.

Q. Then, if I have not misunderstood you, was it not your son-in-law, Mr. Barletta, the person commissioned to make the deal? *A.* Yes, sir.

Q. But that you advised Mario Mercado e Hijos that you refused?

Mrs. Olivieri: Yes, sir.

Attorney Ochoteco: Did you not in turn make Mario Mercado e Hijos any counter offer? *A.* I told Barletta, "Nothing doing on such terms. Let us look elsewhere."

Q. Did you look elsewhere? *A.* In 1938 we started to hustle—

Q. Who are "we"? *A.* I, Mr. Barletta and my children; the family. We had to hustle so as to get rid of those worries that were driving me crazy.

Q. Then it was not until 1938 that you began to hustle? *A.* More or less. I cannot tell you exactly.

Q. Was not it in 1937? *A.* Yes, I think it was in 1937.

Q. Do you think so. *A.* Yes, sir.

Judge: Instead of the year 1938, it was 1937? *A.* I do not remember exactly.

Q. 1937? *A.* I think so.

Attorney Ochoteco: Try to remember if it was in 1937 or in 1938.

Mrs. Olivieri: I think it was in 1937.

Attorney Ochoteco: Was it at the beginning or at the middle of the year 1937? *A.* I do not remember.

Q. Do you remember, madam, if you leased one of the properties to which you have referred in your testimony, and sold the other about the year 1937? *A.* One of them was leased.

Q. Did you sell another? *A.* I sold another, but I do not remember the date, the year.

Q. I am not asking you about the dates. *A.* I am telling you, please—

Judge: Another question.

Attorney Ochoteco: The talks you had, the several talks you had with Mr. Barletta, in connection with the offer of Mario Mercado e Hijos, did they always take place before you sold or leased your parcels? *A.* Yes, sir, of course.

Q. You say that you do not remember the date on which you sold nor when you leased?

Mrs. Olivieri: Messrs. Blasini and Lluberas—

Attorney Ochoteco: Do you or do you not remember? *A.* I think it was in March, 1938. I do not have,—I think it was in March, 1938.

Attorney Sabater: May it please the court, Mr. Blasini, who is a doctor, wishes to feel his mother's pulse.

Mr. Blasini: May it please the court, I would like to feel my mother's pulse, due to the fact that she is not in good health.

Judge: Very well. You may rest as long as you wish.

Attorney Ochoteco: Please the court, we move for a recess.

Judge: Then the court declares a few minutes recess. A recess will be declared each time the lady needs it, and the lady shall be treated with every consideration. Then the court declares a recess.

[Recess of the court.]

Judge: Let us proceed with the hearing of civil case number 311.

Attorney Ochoteco: Will the stenographer be kind enough to repeat the last question put by me before the recess?

Stenographer [reading from his notes]:

"You say that you do not remember the date on which you sold nor when you leased?"

Judge: I warn counsels for both sides to be as brief as possible.

Attorney Ochoteco: According to the deed before me, did you sell to Messrs. Lluberas and Blasini on March 9, 1937?

Mrs. Olivieri: Yes, sir. I think so.

Q. How long, madam, more or less were you in negotiations with Mario Mercado e Hijos in connection with the sale or lease of the estates to which you have referred in your testimony? More or less, how long? *A.* I think it was in '36, but I do not remember now the date.

Q. Was it months, days or weeks? *A.* I think it was weeks.

Attorney Ochoteco: How long were you in negotiations with Mr. Manuel Francisco Lluberas-Passarell and Mrs. Antonia Lluberas-Passarell, etc., with the people to whom you sold; how long were you in negotiations with them?

Mrs. Olivieri: I do not remember. What I want is to explain to you if you allow me.

Q. The question is how long. *A.* I do not remember how long. I do not remember whether it was days.

Q. Was it a few days or many days? *A.* I think it was a few days, I do not remember well.

Q. For the purpose of refreshing your memory, do you remember having testified before this District Court of Ponce in any

ejectment proceedings brought by Messrs. Lluberas against Mario Mercado e Hijos? *A.* Yes, sir. I remember. I remember that I came to testify.

Q. Did you come to testify as a witness? *A.* Yes, sir.

Q. Do you remember whether that took place about the 23d of February, 1938? *A.* I do not remember.

Attorney Ochoteco: But was it on the day of the trial?

Mrs. Olivieri: Yes, sir. On that day. On the day of the trial, but I do not remember exactly the date.

Q. Can you remember whether I, who was the attorney examining in that case, was putting questions to you while you were on the stand, in the other court room before Judge Todd? *A.* Yes, sir. You were putting those questions to me.

Q. Do you remember, madam, whether the following question was put to you in that case: "How long were you in negotiations for the sale of the estate to the Heirs of Lluberas?" and your answer was: "For many days." Do you remember that? *A.* I do not remember.

Q. You do not remember having made that statement? *A.* I do not remember.

Q. Did you testify that it was many days? *A.* I do not remember.

Q. Prior to the day when finally the deal was closed with Lluberas, for how many days previously had you been in negotiations with Messrs. Lluberas?

Attorney Tormes: She has already stated that she did not remember.

Mrs. Olivieri: I do not remember.

Attorney Tormes: She has already stated that she did not remember.

Attorney Ochoteco: It is a different question.

Attorney Tormes: I am going to object. I would like to know what my colleague has in mind, so as to make an objection then in order to raise a legal question.

Attorney Ochoteco: My aim is to prove the essential averments

of the complaint herein. Now, adhering to the theory of our Supreme Court, I say that we are not bound under any circumstances to tell my colleague the particulars which we want to show by means of the witness. He will know when the witness leaves the stand. Now, the court will decide inasmuch as for the present I am examining one of our witnesses.

Attorney Tormes: Then, in accordance with the averments of the complaint, and in accordance with the evidence here submitted by the plaintiff, we think with the leave of the court that the plaintiffs are estopped from bringing before this court any evidence to disprove the authentic instruments submitted in evidence, and we are in our purpose supported by Sections 1, 2, and 3, better expressed, subdivisions 1, 2, and 3 of Section 101 of the Law of Evidence, which read as follows:

> "The following presumptions, and no others, are deemed conclusive:
>
> "1. A malicious and guilty intent from the deliberate commission of an unlawful act, for the purpose of injuring another.
>
> "2. The truth of the facts recited, from the recital in a written instrument between the parties thereto or their successors in interest by a subsequent title; but this rule does not apply to the recital of a consideration.
>
> "3. Whenever a party has, by his own declaration, act, or omission, intentionally and deliberately led another to believe a particular thing true and to act upon such belief, he cannot in any litigation arising out of such declaration, act, or omission, be permitted to falsify it."

Judge: Where the word "compensacion" appears it must be read "consideracion". The English text says "consideration".

Attorney Tormes: Later on I am going to refer to certain papers submitted in evidence. It is sought to refute the plaintiff, what she did of her own will. There appears in evidence the deed of mortgage cancellation number 8 executed on March 7, 1937,

and which was marked Exhibit I of Plaintiff; admitted without objection. From this deed your Honor will see that Mrs. Belen Gonzalez-Salicrup, widow of Tous-Soto, and her children, bought from Mario Mercado e Hijos a mortgage credit amounting to $41,000 owed by the defendant lady to Mario Mercado e Hijos.

[Attorney Tormes argues at length on his objection.]

Attorney Ochoteco: The legal provisions of the Law of Evidence cited by my colleague are not applicable. There is a confusion in the terms and concepts in this case.

[Attorney Ochoteco argues thereon.]

Attorney Sabater: I want to record my objection to any further testimony given by the witness on the same grounds set forth by my associated colleague, and moreover on the ground that nowhere in the complaint of Mario Mercado e Hijos does it appear that it has been alleged that the mortgage credit assigned to the heirs of Tous-Soto has been cancelled. How can the witness be examined regarding the cancellation of such mortgage credit if the point does not appear in the complaint as having been alleged?

[Attorney Sabater argues thereon.]

Attorney Ochoteco: We submit the question.

Judge: This is the same question as yesterday's. Yesterday this aspect of the case was discussed at length. The court thinks that it is admissible within the theory of the case and that it has been amply discussed. The court admits the question within the theory submitted for determination.

Attorney Tormes: We take exception.

Attorney Sabater: We respectfully take exception.

Attorney Ochoteco: We pray the stenographer to repeat the question.

Stenographer [reading from his notes]:

> "Prior to the day when finally the deal was closed with Lluberas, for how many days previously had you been in negotiations with Messrs. Lluberas?"

Attorney Ochoteco: Kindly answer.

Mrs. Olivieri: I do not remember the days, but what I do remember is that I said to Chito: "Do not talk about business, because until the mortgage is cancelled I cannot talk about business. With neither one nor the other. We will take up negotiations for the sale or the lease, but not until the debt is settled."

Q. Whom does the lady mean by Chito? *A.* Francisco Lluberas.

Q. You said that when you were talking to Chito, and whom else? *A.* Blasini.

Q. Did you say to him that until the mortgage was paid, you were not in a position to do the business? *A.* Yes, sir.

Q. To Mr. Lluberas and to Mr. Blasini? *A.* Yes, sir.

Q. And to which mortgage were you referring when talking to them? *A.* To the mortgage of the widow of Tous-Soto.

Q. That is, that so long as the mortgage was alive, without being paid, you could neither sell nor lease by reason of the existing option to purchase?

Mrs. Olivieri: On account of the mortgage which I owed to that lady and that money I could not do any business until it was paid.

Attorney Ochoteco: Why could not you do it? *A.* Because I was not in a position to do so nor did I want to talk until the debt was paid. After paying the debt I would talk about selling or leasing.

Q. Then, Messrs. Lluberas and Mr. Francisco Lluberas and Mr. Blasini approached you when the mortgage was paid? *A.* They approached me when the same was paid.

Judge: You had better heard the whole question. *A.* I do not quite follow.

Attorney Ochoteco: A short while ago you testified here that more or less you were telling Lluberas and Blasini that you could not close any deal in regard to the sale or lease of the property until the mortgage to the widow of Tous-Soto was paid? *A.* Yes, sir.

Attorney Ochoteco: When you were making those statements

to Messrs. Lluberas and Blasini, the mortgage due to the widow of Tous-Soto was not yet cancelled?

Mrs. Olivieri: It was not cancelled.

Q. And why did you say to Messrs. Lluberas and Blasini, when the mortgage to the widow of Tous-Soto was not cancelled, that until such mortgage was cancelled you could not entertain proposals for the sale or lease of those estates? *A.* Because they had made me an offer to purchase and lease and I would say to them: "We must not talk about this until the debt is settled."

Q. When you say that they made an offer to you to purchase and lease, what did Lluberas offer to you: to purchase or to lease? *A.* To purchase.

Q. And what did Blasini offer to you? *A.* To lease.

Q. Try to refresh your memory, madam. Let us see whether you can say positively about how many days (I do not ask you the exact number of days), how many days prior to the settlement by you to the widow of Tous-Soto; to the settlement of the mortgage, was it that you told Messrs. Lluberas and Mr. Blasini that you could not either sell or lease until the mortgage was settled?

Mrs. Olivieri: I do not remember the number of days.

Attorney Ochoteco: More or less? *A.* I cannot remember; may be 5, 6, 10; I do not remember.

Q. How many times Messrs. Blasini and Lluberas made offer to lease and to purchase? *A.* Once or twice.

Q. While the mortgage was still in force? *A.* Yes, sir.

Q. Madam, when you decided to accept the offer from Messrs. Lluberas and Blasini to purchase and lease those estates from you; when you had already made up your mind to sell and to lease, did you notify Mario Mercado e Hijos that you had received such offer to purchase and lease, by registered mail? *A.* No. My nephew Millo Blasini called on me—

Q. Mr. Emilio— *A.* Yes, sir. And he said to me: "Aunt Elvira, the mortgage has been paid up and I bring you here the promissory notes."

Attorney Ochoteco: That will do.

Attorney Tormes: Let her explain.

Judge: The fact is recorded that she draws out some paper.

Mrs. Olivieri: He then said to me: "Here are the promissory notes, the mortgage is already settled; now, let us see whether we can talk about the lease and the sale." Then that night we talked about the lease, and I said to him: "Tell Chito to call on me tomorrow with the deed ready, in order to talk about the sale. That for one thousand or five thousand dollars more or less, we will always come to an agreement." And the next day Chito called to sign the deed.

Attorney Ochoteco: My question has not been yet answered, though I am obliged for all your statements. My question is as follows: whether you notified Mario Mercado e Hijos by letter or registered mail that you had an offer of purchase and lease from Messrs. Lluberas and Blasini.

Attorney Tormes: We object to the question as immaterial and irrelevant, inasmuch as she was under no obligation to notify, because Mario Mercado e Hijos held no interest in the mortgage, and the option clause was in favor of the widow of Tous-Soto and her children.

[Attorney Tormes argues thereon.]

Judge: She had already answered the question at the start and went on explaining. The question has already been answered. The question is admitted, of course.

Attorney Tormes: We take exception.

Attorney Sabater: We make a similar objection and take the same exception.

Attorney Ochoteco: Will the stenographer be kind enough to read the preceding question?

Stenographer [reading from his notes]:

> "My question has not been yet answered, though I am obliged for all your statements. My question is as follows: whether you notified Mario Mercado e Hijos by letter or registered mail that you had an offer of purchase and lease from Messrs. Lluberas and Blasini."

Mrs. Olivieri: My answer is: I did not have either to answer them or to write them.

Attorney Ochoteco: That is not an answer to my question.

Judge: What is the answer to the question?

Mrs. Olivieri: No.

Q. Now you may explain why you did not do it. *A.* The explanation is very simple. The explanation is that I did not have to write them by registered mail, because I owed them nothing. The indebtedness was to Mrs. Tous-Soto.

Q. Please proceed.

Attorney Ochoteco: Did not you notify them verbally either? *A.* No, not at all, because—

Q. If my memory does not fail me, madam, and each time that I make a statement which is not true, I beg of you to call my attention; if my memory does not fail me; you said that on the night of the day when you cancelled the mortgage of the widow of Tous-Soto, Mr. Blasini called at your house to execute a deed of lease? *A.* Yes, sir.

Q. Was it so? *A.* Yes, sir, not in the same words.

Attorney Tormes: That is what my brother attorney says.

Attorney Ochoteco: I beg my brother attorney to go on with this case as we have done up to the present. Of course, if the lady does not understand—

Mrs. Olivieri: I fairly understand; I fairly understand what it is about.

Judge: That is as far as she is concerned.

Attorney Ochoteco: To discuss or to settle the contract of lease? *A.* Yes, sir.

Judge: To settle. Is "to settle" the word? *A.* Yes, sir.

Q. What is the answer? *A.* Concerning the lease.

Attorney Ochoteco: Was it on that night? *A.* Yes, sir.

Judge: The question has been answered.

Attorney Ochoteco: And if my memory does not fail me, madam, I heard you say that on that very night . . . Was not the

lease contract closed, the lease contract with Mr. Blasini, on that night?

Mrs. Olivieri: Yes, sir.

Attorney Ochoteco: Verbally, I mean. *A.* Yes, sir. Verbally.

Q. Then, did you tell Mr. Blasini to tell Mr. Lluberas to prepare the deed? *A.* Yes, sir. For the sale.

Q. That talk, that is, that meeting between you and Mr. Blasini took place in Mayaguez, if I understand right. *A.* Yes, sir.

Q. In the house of Mr. Barletta, where you were residing? *A.* Yes, sir.

Q. What did you do the next day? *A.* The deed was executed and the price stipulated was $40,000, which Mr. Lluberas paid me.

Q. You, of course, did not notify either this lease and sale deal or proposals to lease and purchase which were subsequently carried out, to the widow of Mr. Tous-Soto. *A.* No, why should I?

Attorney Ochoteco: Madam, which of your two estates was involved—

Mrs. Olivieri: The estates are known as "Indios" and "Juanita".

Q. What is the name of the one sold by you to Lluberas? *A.* "Indios."

Q. What is the name of the one you leased to Blasini? *A.* "Juanita."

Q. Which of the two estates was worth more, "Indios" or "Juanita", at the time you closed the above deals, those transactions, I mean actual value, if you know it? *A.* I do not quite understand that question about actual value, but I estimated "Indios" to be worth $40,000. I was very much attached to that estate, as I stated in the other testimony.

Q. Are you referring to what you testified in the ejectment proceedings? *A.* Yes, sir. I was very much attached to it.

Q. Which is the larger of the two estates? *A.* "Juanita."

Q. Better land?

Mrs. Olivieri: Both are the same.

Attorney Ochoteco: The same kind of land? *A.* Yes, sir.

Q. Which of the two had more canes planted? *A.* "Juanita."

Q. A great deal more? *A.* A great deal more, and grazing land also.

Q. Did you borrow from Mr. Manuel Francisco Lluberas-Pasarell on February 25, 1937, money on a mortgage? *A.* Yes, sir.

Q. How much did you borrow? *A.* Five thousand dollars.

Q. Are you sure? *A.* Yes, sir.

Q. In February, 1937? *A.* Yes, sir. $5,000 on a mortgage on "Juanita".

Q. When was it that you borrowed the $45,000? *A.* I do not remember the date. The deed ought to be there. Look it up, please.

Q. It appears from a deed executed before notary Luis Lopez-de-Victoria on February 23, 1937, that you borrowed on a mortgage from Mr. Francisco Lluberas-Pasarell— When was it that Mr. Manuel Francisco Lluberas-Pasarell lent you that $45,000?

Mrs. Olivieri: I do not remember. Did not you say that it was in February?

Attorney Ochoteco: According to the deed it was on February 25, 1937. *A.* That must be the date because it is so stated in the deed.

Q. Would it be about that time, more or less? Do not you remember whether it was on that day that the deed was executed? *A.* I do not remember.

Q. Did he deliver that money to you, madam, that $45,000 which you admitted to have received from him? *A.* He did not deliver it personally, as I instructed him, by power of attorney, to pay to the widow of Tous-Soto the forty-one thousand and odd dollars. I so instructed him, of course, and I had to execute a mortgage to him. I had to secure the money lent by him to me by a mortgage. Do you understand me? Am I clear? I then instructed him, executed a power of attorney to him and said to him: "Please call on the widow of Tous-Soto and pay her."

Attorney Ochoteco: In other words, that he should keep the

money in his possession in order to pay to the widow of Mr. Tous-Soto the money that you owed her upon a mortgage?

Mrs. Olivieri: Yes, sir. That is so.

Q. And how much did he pay the widow of Tous-Soto? *A.* Forty-one thousand dollars.

Q. Was not the mortgage for $45,000? *A.* There was a balance which he delivered to me.

Q. Did he deliver the balance to you? *A.* Of course.

Q. Is Mr. Emilio Blasini related to you? *A.* Yes, sir. He is my nephew.

Q. Your nephew? *A.* Yes, sir.

Q. Married to—? *A.* With the Lluberas lady.

Q. One of the defendants? *A.* Yes, sir.

Q. Sister to Manuel Francisco Lluberas? *A.* Yes, sir.

Attorney Ochoteco: Did Lluberas, or Chito, or Mr. Manuel Francisco Lluberas, tell you the day after closing the lease deal—did he call on you and sign the deed? The day after Mr. Blasini had called at your residence in Mayaguez?

Mrs. Olivieri: Yes, sir.

Q. Was it then that the deed of sale was signed? *A.* Yes, sir.

Q. And the dealings regarding the sale to Chito and the deed of sale from you to Lluberas, was it signed on the day after the cancellation of the mortgage of the widow of Tous-Soto? *A.* Yes, sir.

Q. Was it the next day? *A.* The next day, since I was free.

Q. Was it on the next day? *A.* Yes, sir.

Q. And on the very next day, did you close the deal and sign the deed? *A.* Yes, sir.

Q. On a single day? *A.* Yes, sir.

Q. Of course, you had already had previous talks about this deal? *A.* Yes, sir; two or three times; I do not remember either day or date.

Attorney Ochoteco: I beg the court to bear with me on account of the lengthy examination, but I am examining on the basis of a memorandum before me. When Mr. Chito Lluberas lent to

you the $45,000, was it not on the condition that the lien on account of the principal be prorated between the two estates, that is, that the $45,000 be split, upon the two estates, as security, proportionately to the $45,000?

Mrs. Olivieri: I gave him the mortgage because he had given me the money.

Q. Did not he suggest to you to distribute the lien? *A.* No, I do not think so. I do not remember.

Q. When did you do that? *A.* I mortgaged to him all my land for $45,000, and that is all I remember; that is all I understand.

Q. Tell me, madam. In the sale from you to Messrs. Lluberas of one of the estates on March 9, 1937, by deed number 40 executed before notary Luis Lopez-de-Victoria, it is stated that the consideration of the sale is $40,000. This amount is admitted by Mrs. Elvira Olivieri-Commins as having been received from the purchaser before this act to her entire satisfaction, and for which sum, etc. The $40,000 which you admit to have received as the purchase price of your estates, was it not part of the $45,000 lent to you by Mr. Lluberas on a mortgage?

Mrs. Olivieri: Yes, sir. It was part because the amount was 45—

Attorney Ochoteco: Exactly. In other words, out of the $45,000 of the mortgage of Mr. Lluberas, $40,000 were paid by you to him as the purchase price of these estates, there being $5,000 short to be paid to you? *A.* Yes, sir. And I mortgaged to him the estate "Juanita".

Q. Was it so? *A.* Yes, sir.

Q. Tell me, madam, why did you decide to cancel the mortgage of the widow of Tous-Soto in order to execute another one in favor of Messrs. Lluberas, instead of continuing that of Mrs. Tous-Soto, which had not become due? *A.* Because the mortgage interest to be paid to her was 9 percent, whereas the mortgage to Lluberas was 8 per cent, and I had the advantage that it would have been easy for me to pay him even at 7 percent, because we were good friends.

Attorney Ochoteco: Then the mortgage of the widow of Tous-Soto was bearing 9 percent and the mortgage to Lluberas was going to bear 8 percent?

Mrs. Olivieri: Yes, sir.

Q. Was it 1 percent the profit you were going to make? *A.* Yes, sir.

Q. Then, madam, in order to make up your mind to pay the mortgage to the widow of Tous-Soto and to borrow the money from Mr. Lluberas so as to profit by 1 per cent, you had figured and knew that you were going to be benefited by 1 percent? *A.* Yes, sir.

Q. Did you know that you had to pay her three installments of interest in advance by reason of the premature cancellation of the mortgage? *A.* I figured. I figured because 9 percent is not the same as 8 percent. I thought first: "May be later on he will reduce the rate of interest to seven."

Q. Did you take into account the cost to you of the cancellation of the mortgage to the widow of Tous-Soto, and the execution of the new mortgage, and record thereof in the Registry of Property?

Mrs. Olivieri: I did not give much thought to that.

Attorney Ochoteco: You stated that one further reason for substituting the mortgagee was that Mr. Lluberas was related to you? *A.* He is not related to me, but a close friend of mine.

Q. Do you consider each other as related? *A.* Yes, sir. In great mutual regard.

Q. A friendship, of how many years? *A.* A great many years.

Q. More or less? *A.* I do not know. Think of it, before he was born.

Q. At least, a friendship of 50 or 60 years? *A.* Almost.

Q. Tell me, madam. For the purpose of that substitution, you were borrowing from Mr. Lluberas $45,000 on a six-month mortgage. Do you realize that you were going to cancel a mortgage that had not yet become due, and substitute for it one to Mr. Lluberas for six months? *A.* I borrowed that money for six months, it is true, but always in due hope that he would extend

the time at a lesser rate of interest. And that is why I borrowed that money from him in order to pay the widow of Tous-Soto.

Attorney Ochoteco: We know already that, but how can you explain away the borrowing of that amount for six months ($45,000 for six months), after which period the mortgage credit would have become due, and then to find yourself after six months with a mortgage credit already due for $45,000?

Mrs. Olivieri: In the hope that subsequently he would reduce the rate of interest. I am sure he would have accommodated me.

Q. Madam, when you received the $40,000 from Mr. Lluberas by virtue of the sale made to him of one of your estates, there was the sum of $5,000 short, and that $5,000 according to you were lent by him on a mortgage on some other estate? *A.* Estate "Juanita".

Q. At the rate of 6 per cent and for five years? *A.* Yes, sir.

Q. And why did not you, when you executed the mortgage for $45,000, made that mortgage for five years, instead of for six months, at 6 per cent, instead of at 8 per cent, and on the other hand, when the sum was $5,000, you made it for five years?

Mrs. Olivieri: Will you please explain. I do not quite follow you.

Attorney Ochoteco: Of the $45,000 from Mr. Lluberas, $40,000 were for the sale of the estate "Indios". Then the balance of $5,000, up to $45,000, is secured by you with a mortgage upon the estate "Juanita", for five years, at the rate of 6 per cent annually. *A.* Yes, sir.

Q. Was it not so? *A.* Yes, sir.

Q. Now, the question is as follows: why, when a $5,000 mortgage is involved, did you execute such mortgage for five years at 6 per cent, and on the other hand when a $45,000 mortgage is involved you executed the mortgage for six months at 8 per cent? *A.* I will tell you. At the time of the execution of the mortgage for $45,000, I always hoped that he would reduce (the rate of interest), and always with the idea of borrowing such amount and pay, and this is proven by the fact that he was so liberal that

he executed to me the "Juanita" mortgage and brought down the interest to 6 per cent.

Q. The five-year mortgage?

Mrs. Olivieri: Yes, sir, and if I had asked him 20, he would have allowed me 20.

Attorney Ochoteco: But you did not ask him a 20-year mortgage when you borrowed from him the $45,000? *A.* At that time—

Q. Do you know attorney Porrata, Mr. Pedro M. Porrata? *A.* I think I do.

Q. The gentleman sitting there? *A.* I think I do.

Q. Did you state before that you knew Mr. Peralta? *A.* Yes, sir.

Q. Did you know, in or about the month of March 1937, Mr. Pastor Mandri? *A.* Yes, sir.

Q. And Mr. Gilberto Barbosa-Sicardo? *A.* I do not know him.

Q. Look and see if you know him. Look and see if you remember having seen him. *A.* This is the first time I see him.

Q. Please try to remember if you have seen him in your residence in Mayaguez, about the 10th of March, 1937. *A.* No, sir.

Attorney Ochoteco: Together with Mr. Peralta, Mr. Mandri and Mr. Porrata—

Mrs. Olivieri: The day when they forced their way into my house?

Q. What, did they force their way into your house? *A.* There was a crowd and I think he was not there.

Judge: Who is he?

Attorney Ochoteco: Gilberto Barbosa-Sicardo. When have you seen him for the first time? *A.* Now.

Q. Do not you remember the former ejectment proceeding, when you took the stand, madam, and that I introduced to you this same gentleman? *A.* I do not think he is the same.

Q. He is stouter, as he married. Do you remember my introducing to you a young man? *A.* I remember. I remember your introducing him to me, but I did not know that it was he.

Judge: That is what she answers, that she did not recognize him. *A.* It is because he is now stouter.

Attorney Ochoteco: Do you remember that these gentlemen called at your house in Mayagüez?

Mrs. Olivieri: Yes, sir.

Q. Please the court, I move for a five-minute recess.

Judge: Any objection from anybody?

Attorney Tormes: None.

Judge: Then a five-minute recess is granted.

[Recess of the court.]

Judge: The session of the court is proceeded with. The hearing of this case is continued. Let us proceed with the examination.

Attorney Ochoteco: Do you remember, madam, that in the deed of sale to Messrs. Lluberas from you, it was agreed as follows: "As there is a lease in favor of Mario Mercado e Hijos upon the estates sold, which lease matures on June 2, 1937, the purchasers shall take actual possession of such estates in accordance with the clauses of the aforesaid lease constituted by deed number 50 executed in Ponce on April 5, 1927, before notary Francisco Parra Capo, and Mrs. Elvira Olivieri Commins will take every step so that upon maturity of the lease the delivery shall be made as usual; but should Mrs. Elvira Olivieri Commins meet with difficulties in getting the actual possession of the estates hereinbefore described from the lessees thereof, such circumstance shall be held to be *force majeure*, and any delay in delivering the possession, without fault or negligence on the part of the vendor, shall not render the latter liable at all." Can you explain why such clause was inserted there, if you remember?

Mrs. Olivieri: I do not remember.

Attorney Ochoteco: Do you remember why it was inserted? *A.* Let me think a moment. That is in connection with Messrs. Lluberas, because I said: "If I cannot get these gentlemen to let me have the property, Chito, who is a man and who is well posted in all such things, will see to it that they deliver to him the lands

sold by me, because he can of course do that better than I", and I inserted it in the deed.

Q. That is not what is stated there.

Mrs. Olivieri: That is my explanation, a simple one, because my knowledge is not very profound. And being unable to do so, I said to him: "Chito, take charge of that", and then he did it.

Attorney Ochoteco: That is all with the lady.

Judge: Did you finish with the witness?

Attorney Ochoteco: Yes, sir.

Attorney Tormes: Mrs. Olivieri, you mentioned just a moment ago certain promissory notes that Mr. Emilio Blasini had delivered to you in the night of March 8, 1937?

Mrs. Olivieri: Yes, sir.

X-Q. Did he deliver to you four promissory notes? *A.* I think they are four.

X-Q. I show them to the party for examination. Then, have these papers been in your possession ever since? *A.* Yes, sir. I was keeping them and brought them with me.

X-Q. Let us identify them to be submitted in evidence in due time.

Judge: Let them be marked numbers 1, 2, 3, and 4 as exhibits for the defendants. Mrs. Olivieri, you said that you knew about the assignment or sale of the mortgage credit owed by you to Mario Mercado e Hijos, and the latter had assigned to Mrs. Belen, widow of Tous-Soto? Did you know of that?

Mrs. Olivieri: Yes, sir, on receipt of a letter from Zapater advising me that Mario Mercado e Hijos had assigned the mortgage right, the mortgage credit.

Attorney Tormes: Showing it to the brother attorney— *A.* That was written by Mr. Zapater.

X-Q. Showing him a copy of the notice and of the deed.

Attorney Ochoteco: That is all right.

Attorney Tormes: Look and see this.

[The witness examines some papers presented to her by attorney Tormes.]

A. It is stated here: "You are hereby notified . . ."

Attorney Ochoteco: Admitted—

Attorney Tormes: Is that the notice received by you when Mario Mercado e Hijos sold to the widow of Tous-Soto?

Mrs. Olivieri: Yes, sir.

X-Q. In order that these papers should be marked—

Judge: The court—

Attorney Tormes: —should be marked as identified papers—

Judge: It is marked Exhibit 5.

Attorney Tormes: For the present we have finished.

Attorney Sabater: Please the court, in order that also, as far as our client is concerned, these papers should be also identified—

Judge: Do you accept that evidence as yours?

Attorney Sabater: Yes, sir.

Judge: Then the attorney who represents Mrs. Elvira Olivieri-Commins makes his this evidence, and it is thus identified. Later on it will be submitted in evidence, but for the present they are identified. Then, is the testimony of Mrs. Elvira Olivieri-Commins over?

Attorney Tormes: Yes, sir.

Judge: Do both sides rest with the testimony of the witness?

Attorney Ochoteco: For the present we rest, without prejudicing to cite the same at the proper time in regard to some particulars that we may consider relevant.

Judge: Then, for the present it is over and the court is going to declare a recess.

Attorney Ochoteco: We have a request to make, and it is that at our expenses the telegraph operator in Mayaguez office, or the chief of the office, be summoned to appear, bringing the telegram submitted in evidence as Exhibit N. We want to make the following statement: this is to show that although this telegram is dated January 23, 1936, this telegram was sent from Mayaguez on January 23, 1937. It seems that by reason of being the first month of the year, it usually happens that the previous year is mentioned, and this is a telegram from Mrs. Elvira Olivieri dated

in 1937. We want the officer from the Mayaguez telegraph office to appear and bring with him the original of this telegram.

Judge: Then let the marshal issue the summons for his appearance, today or tomorrow?

Attorney Ochoteco: This afternoon would be preferable; tomorrow at nine A.M. would be better.

Judge: Then let us recess until two P.M.

[Recess of the court.]

AFTERNOON SESSION.

Judge: The session of the court is opened and the trial of the case continues as well.

SWORN TESTIMONY OF MANUEL FRANCISCO LLUBERAS.

Attorney Ochoteco: What is your name?

Mr. Lluberas: Manuel Francisco Lluberas.

Judge: Are you the person who is affectionately called "Chito"? *A.* Yes, sir.

Judge: It is for the purpose of identifying you.

Attorney Ochoteco: Are you one of the defendants in this case? *A.* Yes, sir.

Q. Will the witness please tell me the name of his mother? *A.* Elena Pasarell-Delgado.

Q. Is she at present in Puerto Rico? *A.* No, sir.

Q. How long has she been absent from Puerto Rico? *A.* The last time she visited Puerto Rico was about two years ago.

Q. Do you remember whether she went there about the month of February, 1937? *A.* About that time—

Judge: In February?.

Attorney Ochoteco: 1937. Do you know the "Juanita" estate? *A.* Not much in detail, but I have heard the estate spoken of.

Attorney Ochoteco: Do you know where it is located?

Mr. Lluberas: Yes, sir. I know where it is.

Q. Do you know the "Indios" estate? *A.* Yes, sir.

Q. Do you know where it is? *A.* Yes, sir.

Q. Are you an experienced farmer? *A.* Yes, sir. I can say I am.

Q. And in the matter of appraising rural estates? *A.* Yes, sir, in this part of Puerto Rico.

Q. How much was the "Juanita" estate worth in or about the year 1937, about the month of March? *A.* I could not tell you with precision, because I was never interested in that estate, nor have I made any inspection thereof, as is the custom with the purchasers of an estate.

Q. And as to the "Indios" estate? *A.* That was worth a certain amount for us.

Q. How much? *A.* As much as we paid for it.

Q. How much did you pay? *A.* Forty thousand dollars.

Attorney Ochoteco: When you say "we," whom do you have in mind?

Mr. Lluberas: My sisters and myself.

Q. Are your sisters the other co-defendants in this action, with Mrs. Elvira Olivieri-Commins? *A.* Yes, sir.

Q. Have you an idea as to the value of the "Juanita" estate? *A.* I might state an amount and be in error. I am not acquainted with it, and I do not know how much it brings.

Q. Do you remember having testified, in an ejectment proceeding instituted by you, the co-defendants Lluberas-Pasarell *v.* Mario Mercado e Hijos, before this court, presided by Judge Roberto H. Todd, Jr., where you testified as a witness? *A.* Yes, sir, I remember.

Q. Do you remember my putting to you the following question?—

Judge: Was it an ejectment proceeding?

Attorney Ochoteco: Talking about the "Juanita" estate, whether it was worth more than $25,000, and you said: "I think so." Do you ratify that assertion?

Mr. Lluberas: Yes, sir. I can give you a similar answer.

Judge: Are you referring to "Juanita" estate? *A.* Yes, sir.

Attorney Ochoteco: And you say that you paid for the "Indios" estate $40,000? *A.* Yes, sir.

Judge: How much did you testify that estate was worth?

Attorney Ochoteco: That it was worth more than $25,000. Did you lend Mrs. Elvira Olivieri Commins $45,000? *A.* Yes, sir.

Q. And did you buy the estate "Indios" referred to by us in this examination, for $40,000? *A.* Yes, sir.

Q. The deal between you and Mrs. Elvira Olivieri Commins, was it a loan? *A.* Yes, sir.

Q. Originally? *A.* A loan.

Q. An investment made by you? *A.* Exactly.

Attorney Ochoteco: Why is it that if what you were doing was an investment, a loan transaction whereby you were lending $45,000 to Mrs. Elvira Olivieri-Commins; why did you, when prorating the lien to be borne by the estates burdened by the debt, burdened the estate "Indios" with $40,000, and the "Juanita" estate with $5,000 only, if the "Indios" estate was worth $40,000, and the "Juanita" estate more than $25,000?

Mr. Lluberas: I understood that both estates were going to be given as security for the indebtedness, the payment of my loan; and the attorney who made the prorating had my full confidence and he did it that way; perhaps because it was more convenient for the notary, or the registry or for any other reason.

Q. Tell me, please, is there any other explanation that the witness might furnish, which is not that? Any further explanation other than that? *A.* I think this is the only explanation that fits the case.

Q. You, and I have in mind the date when you effected that purchase, on or about the 9th of March, 1938, and at the time of the trial of the ejectment suit, of which we know; the date about the 20th of December, 1937; about March 9, 1937, had you ever executed any mortgage in your life?

Mr. Lluberas: Yes, sir.

Attorney Ochoteco: And were you at that time as solvent as you are at present? *A.* I think so.

Q. And did you know at that time the meaning of a loan secured by mortgage? *A.* Of course.

Q. Because you had already made other deals regarding mortgages? *A.* Yes, sir.

Q. What was your age, or how old were you in 1937? Pardon my insistence as to the age. *A.* I was two years younger than now; a little less than 38.

Q. Between 37 and 38, more or less? *A.* Yes, sir.

Q. And had you been many years in business? *A.* Yes, sir.

Q. About 1937, had you been for several years in important business? *A.* Yes, sir.

Judge: Less than 38 years old means that you were then between 37 and 38?

Mr. Lluberas: Near 38.

Attorney Ochoteco: Please tell me; as you were, in or about March, 1937, a business man, an age of discretion, who had lent out money on mortgages, and a considerable sum being involved, $45,000 for instance, you did not see to it that the $45,000 were evenly distributed between those two estates, considering the liability of each estate, so that the two estates should answer for the $45,000 proportionately to their value? *A.* The estates covered the amount of the indebtedness; the payment of the debt.

Q. Was one answerable for $5,000 and the other for $40,000? *A.* Yes, sir.

Q. Why did not you see to it that they were answerable, that they were proportionately balanced, if you were a business man, proportionately to the value of each of these two estates, but instead you made one of the estates answer for $40,000 and the other estate, which according to you is worth $25,000, answer for $5,000 only? *A.* That did not matter.

Q. Why did not it matter? Did not you want to secure your money?

Mr. Lluberas: Yes, sir.

Attorney Ochoteco: At the maximum, on a 100 per cent se-

curity? *A.* I considered it well secured at a 100 per cent, as we did.

Q. You had testified that the "Indios" estate, bought afterwards by you and your sister, was worth $40,000? *A.* Yes, sir.

Q. If the estate was worth $40,000 and you made it to answer for a sum equal to its value, and allow the "Juanita" estate to answer for $5,000; was not it better to prorate such amount between the two, if one is worth $40,000 and the other is worth $25,000? Then, proportionately, let us put it, for example, that one estate should answer for $25,000 and the other for $20,000, or one for $15,000 and the other for $30,000? *A.* Because by the way it was done, I considered the investment to be secured.

Q. Then, you bought that estate which secured $40,000, precisely for that $40,000? *A.* Yes, sir.

Q. And you, in order to invest $45,000, which is a very respectable amount—at least to me—was it so to you?

Mr. Lluberas: Also, very respectable.

Attorney Ochoteco: To me that amount of $45,000 is a very respectable sum. Did you not, before investing such amount, go and see those estates, in order to ascertain their value? *A.* The estates were mortgagd for $41,000, and I deemed it unnecessary to go and look at the "Juanita" estate, in view of the fact that I knew what the two estates were worth, and what another investor would have advanced for the two estates.

Q. If I understood correctly—please correct me if I am mistaken—did you rely on the judgment of former mortgagees? *A.* Yes, sir.

Q. Did not you go and look at the "Juanita" estate? *A.* No, sir.

Q. Tell me, Mr. Lluberas, as you relied on the financial view point of former mortgagees as to the value of the "Juanita" estate and as to the value of the "Indios" estate, did you rely on that financial viewpoint as to the prorating of the mortgage liability? Did you prorate it in the same way as the former mortgagee; did you follow such viewpoint?

Mr. Lluberas: I have stated before that the attorney made the prorating of the valuation of the two estates.

Attorney Ochoteco: For the purpose of properly explaining my weighing of your testimony—and if my interpretation is wrong, please correct me. And you, who were going to invest $45,000 on two rural estates, who relied as to the final security on the judgment of a former mortgagee—please correct me if I am mistaken—was this so? *A.* Yes, sir.

Q. Do you state to me that as regards the prorating of the liability between the two estates, you allowed yourself solely and exclusively to be guided by the honest judgment of your attorney? *A.* Exactly.

Q. Of attorney Luis Lopez-de-Victoria? *A.* Exactly.

Q. And you, who were going to part with $45,000, a respectable sum according to you, you delegated to the notary the responsibility of prorating such amount, having followed the judgment, as to the investment, of the former mortgagee, for the prorating of the security? *A.* I accepted the prorating made by the attorney.

Attorney Ochoteco: And why did not you take the trouble; did not make the effort, did not act on your own initiative, as a man of business, as you have stated, the business of lending money on mortgage, did not make the prorating yourself, and you told the notary to make such prorating himself?

Mr. Lluberas: Because the "Indios" estate adjoins our property, and by appraising the other at $5,000 I considered that the money was well secured, without the necessity of entering into further details.

Q. Did you know that that estate was worth $40,000? *A.* Yes, sir, and some more.

Q. Was it worth more than $40,000? *A.* At that time, and subsequently I would have rejected an offer of $60,000.

Q. Irrespective of such considerations, which have no bearing on the suit. *A.* The value of the estate is relative.

Q. You have testified that this estate (and I am now confining

myself to your previous testimony), that that estate was worth $40,000; did not you call the notary's attention when you saw that he had set down $40,000 as the value of one estate and $5,000 as the value of the other? When making the deed, did you read the mortgage deed before affixing your signature to it?

Mr. Lluberas: Of course.

Attorney Ochoteco: Did not you call the notary's attention to it? *A.* I did not.

Q. Did not you ask him the reason why he made such prorating? *A.* It was immaterial. Such prorating in this case was immaterial.

Judge: Please proceed.

Attorney Ochoteco: When did you show to Mrs. Elvira Olivieri-Commins that you were interested in buying the "Indios" estate? *A.* I do not quite exactly remember, but it was long ago.

Q. As regards the date of the purchase, was it on March 9, 1937? *A.* A couple of years, perhaps. One or two years; a couple of years at least.

Q. Prior to the signing of the deed of sale?

Mr. Lluberas: *A.* Yes, sir.

Attorney Ochoteco: When did you first speak to her about your being willing to buy that estate? *A.* Two years prior to the execution of the sale. At least, the time previously stated. I do not know how long it was, but it was long ago.

Q. Did you tell her anything before? *A.* What I have just said. My answer to the former question.

Q. And what did she tell you? *A.* That she could not sell the estate.

Q. Why? *A.* Because she was under an engagement to the mortgagees.

Q. Try to refresh your memory and see if you can be more explicit in your answer. Can you remember whether, I put this question to you at the trial of the ejectment proceeding instituted by you and your sisters against Mario Mercado e Hijos, which trial was had on December 20, 1937, presided by Judge Roberto

H. Todd, Jr.? Can you remember whether I put that question to you, if you remember it? *A.* You must have put that question. Why?

Q. Can you remember if I put to you the following question: "And what did she tell you in answer to your offer to purchase from her?" "That she could not sell", was your answer. Is that all right?

Mr. Lluberas: Just as now.

Attorney Ochoteco: And I asked you: "Why?" And you answered: "Because she had executed a mortgage to Mario Mercado e Hijos which forbade her to dispose of her property." Do you remember having testified to that effect? *A.* Yes, sir, but you did not ask me whether that mortgage credit—

Q. So that you ratify that statement, that when you asked her the reason why she would not sell, she answered to you, about one or two years prior to the signing of the deed of sale from her to you, in connection with the "Indios" estate, that she could not sell because she had executed a mortgage deed to Mario Mercado e Hijos, which forbade her to dispose of her property? *A.* I do not ratify anything; that was my statement in that case, but afterwards it was assigned—

Q. My question is whether or not you made that statement in the previous ejectment proceeding, at the time and place above mentioned.

Attorney Tormes: I will move the court, in the exercise of the power conferred by Section 149 of the Law of Evidence, to order and direct the way in which the examination should be conducted. The witness has explained that if he ever said that—

Judge: The question is whether on that occasion he made such statement.

Mr. Lluberas: He asked me whether I would ratify that statement.

Judge: The court asks you whether on that occasion you made the statement which appears there. *A.* Exactly, I said so.

Attorney Ochoteco: Then, irrespective of your point of view

and irrespective of any explanation that you might wish or might be able to make at the proper time; it is a fact, and I am not speaking of what you might think, but of what Mrs. Elvira Olivieri told you; the fact is that when you asked Mrs. Elvira Olivieri the reason why she did not sell to you and to your sisters the "Indios" estate, she told you that she would not sell it because she had given a mortgage to Mario Mercado e Hijos, which forbade her to dispose of her property? *A.* She told me that she had an agreement with her creditors.

Attorney Ochoteco: Did not she mention to you a mortgage contract with Mario Mercado e Hijos which forbade her to dispose of that property?

Mr. Lluberas: I do not remember her having said that. She told that she had an agreement with her creditors.

Q. Just a moment ago, if my memory does not fail me, when reading the question to you and your answer, you stated that you remembered having testified that. *A.* Yes, sir.

Q. Do you remember that now? *A.* Yes, sir (an answer to a question).

Q. In regard to the negotiations for the purchase by the Lluberas people, and I am referring to you and to your sisters, who intervened in their behalf? *A.* I, myself.

Q. Were you at that time their attorney in fact? *A.* No.

Q. Do you remember my putting to you that question, in the ejectment proceeding to which I have referred, on the 20th of December, 1937, in the proceedings instituted by you and your sisters against Mario Mercado e Hijos? *A.* Yes, sir.

Attorney Ochoteco: Do you remember my putting to you the following question: "Are you their attorney in fact?" And you answered: "Yes, in that case I was not, but . . ."

Attorney Tormes: "But" what?

Attorney Ochoteco: "But" and leaders. I am not going to fill what is missing here.

Mr. Lluberas: Is it not stated there why that interruption occurred?

Attorney Ochoteco: You are answering in that way. Were you acting in their behalf? I asked you that question in that case and I am putting this same question to you now. *A.* I bought the estate and acted in their behalf and in my own behalf; subject to their ratification, of course.

Q. Did you act in their behalf? *A.* Yes, sir.

Q. And that was your answer on that occasion? And did they subsequently ratify the purchase made by you? *A.* Yes, sir.

Attorney Ochoteco: Was it so?

Mr. Lluberas: Yes, sir.

Q. Now, you lent, according to your testimony, $45,000 at the rate of 8 per cent to Mrs. Elvira Olivieri-Commins. *A.* Yes, sir.

Q. For six months? *A.* Yes, sir.

Q. In such important deal involving $45,000, were your sisters copartners in making such loan, or were you alone? *A.* Yes, sir.

Q. Yes, what? *A.* That they were.

Q. When I refer to you, for the purposes of the record, I refer also to your sisters. Such an important deal for $45,000 for such a short time of six months? *A.* What is your question?

Q. Why did you lent [*sic*] $45,000 for such a short term of six months?

Judge: So short?

A. Yes, sir. The term for that loan was suggested by Mrs. Elvira Olivieri. And if she had proposed a six-year term, I would have also lent her the sum.

Attorney Ochoteco: Tell me, Mr. Lluberas, being so experienced in business as you have stated, did you consider and do you still consider the sum of $45,000 an important sum of money? Did you deem it advisable to invest such an amount of $45,000 for a term of six months?

Mr. Lluberas: Mrs. Elvira Olivieri applied for such sum to cancel a mortgage.

Q. A mortgage upon the estate? *A.* Yes, sir.

Q. Of the widow of Tous-Soto? *A.* In order to save money on the interest.

Q. What did the saving consist in? *A.* One per cent during six months; but that does not mean that in specifying six months, no extension to five or ten years, and at a more reasonable rate of interest, could be secured.

Q. At a more reasonable rate of interest? Did not you discuss the reasonableness of the rate of interest at the time of closing the deal? *A.* On account of being pressed for time.

Q. Then, if I am not mistaken in weighing your statement (if I am mistaken, please tell me), Mrs. Elvira Olivieri wanted to save one per cent of the rate of interest which she was paying to the widow of Jose Tous-Soto on a mortgage credit that had not matured? Was not that so?

Mr. Lluberas: Yes, sir.

Attorney Ochoteco: Did she give you a mortgage in order to cancel that old mortgage not yet matured, for six months? *A.* Yes, sir.

Q. And who paid for the expenses of the cancellation of the mortgage of the widow of Tous-Soto? *A.* I was not concerned with that.

Q. In other words, that you did not pay those expenses? *A.* No, sir.

Q. Do you presume that it was she, and you are not certain, or rather you are certain that it was not you? *A.* Yes, sir.

Q. And the expenses of recording the cancellation of the mortgage? *A.* They were to be borne by her.

Q. Those of the execution of the new mortgage? *A.* To be borne by her.

Q. And the expenses of the record of the new mortgage?

Mr. Lluberas: To be borne by her.

Attorney Ochoteco: Three installments of interest that she had to pay, according to these papers, to the widow of Tous-Soto for the premature cancellation of the mortgage? *A.* I suppose, to be borne by her; not by me.

Q. Tell me: your experience as a man of business, and I am

going back to that time, made it advisable for you to make such an investment for six months? *A.* Yes, sir.

Q. And have you made any other deals for six months in mortgages involving $40,000? *A.* I would not have made them, but I have seen them made.

Q. Where? *A.* In the United States.

Q. And in Puerto Rico? *A.* I have not been here long.

Q. How long did you live in the United States? *A.* Twenty-five years.

Q. When did you come from the United States? *A.* In 1933.

Attorney Ochoteco: Nineteen hundred—

Mr. Lluberas: Thirty-three.

Q. That means that you had been about four years when you made the deal of the purchase of the "Indios" estate? *A.* Yes, sir.

Q. That is all.

Judge: Is that all?

Attorney Ochoteco: Not yet. You lent her, and then, when the estate was purchased from Mrs. Elvira Olivieri, she still owed you $5,000 of the $45,000? *A.* Yes, sir.

Q. Is it a fact that the $45,000 of the purchase price were represented by $40,000 of the $45,000 that she had borrowed on a mortgage? *A.* Of the $45,000 of the purchase price she paid me $40,000 in land.

Q. Was it so? *A.* Yes, sir.

Q. And the balance of $5,000 were in a mortgage for five years at 6 per cent? *A.* Yes, sir.

Q. My question now is as follows: why did not you lend to Mrs. Elvira Olivieri the $45,000 for five years from the start?

Mr. Lluberas: She did not borrow them for five years; she borrowed them for six months only.

Attorney Ochoteco: And why was that money lent at 8 per cent instead of at 6 per cent? *A.* Because time was pressing and the short term of the loan.

Q. Is it not a fact that the higher the amount of a loan, the lesser the rate of interest? *A.* Yes, sir.

Q. And that the longer the term the lower the rate of interest? *A.* Yes, sir.

Q. That for $45,000 the rate of interest is lower than for $5,000? *A.* For ten or twenty years, yes, but not for six months.

Q. And why not for six months? *A.* Because she did not ask for it, and was willing to pay that.

Q. And what had she in mind when borrowing that money? *A.* She had in mind to pay an obligation.

Q. To whom? *A.* To Mrs. Belen, widow of Tous-Soto.

Attorney Ochoteco: Why do you state that that was her aim in borrowing from you that money?

Mr. Lluberas: Because she borrowed it to pay Mrs. Belen, widow of Tous-Soto.

Q. Did she tell you that when discussing the deal with you? *A.* After having borrowed the money.

Q. And prior to the receipt of the money, had she told you? *A.* Yes, sir.

Q. Did you know, when Mrs. Elvira Olivieri borrowed from you that money, that she wanted it to pay the other mortgage? *A.* Yes, sir.

Q. In reference to the trial of the ejectment proceeding so often mentioned by me during this examination; at the trial held before this court on December 20, 1937, Judge Roberto H. Todd, Jr., presiding, in the action instituted by Messrs. Lluberas-Pasarell against Mario Mercado e Hijos, do you remember that I asked you why you had charged 6 per cent for five years and why you had charged 8 per cent for $45,000, and that you then answered: "She could get the money at 6% somewhere else, according to her." "And the $45,000?" "She could not get them at 6%." Did you state that?

Mr. Lluberas: If this is there, I must have said so.

Attorney Ochoteco: That $5,000 could be easily found at 6 per cent? *A.* Yes, sir. If this is there, I said it.

Q. Were you her close friend? *A.* Yes, sir.

Q. For many years? *A.* Yes, sir.

Q. How many years, more or less? *A.* For many years, because her children and myself have been brought up together while we were in Puerto Rico. Her children and myself were brought up together before we sailed for the United States.

Q. Therefore, was it a friendship going back, more or less, twenty years? *A.* And more.

Q. Or twenty-five years? *A.* And more.

Q. And you, if my memory does not fail me, are the brother-in-law to one of her nephews? *A.* Quite so.

Q. To which nephew are you a brother-in-law? *A.* Mr. Emilio Blasini.

Q. And then you charged her 8 per cent because you knew that she had no chance to get $45,000 unless it was at 8 per cent, and you charged 6 per cent in the other case because you knew that she could have found the money somewhere else?

Mr. Lluberas: Yes, sir.

Attorney Ochoteco: You made use of your natural acumen as a business man, did not you? *A.* Yes, sir.

Q. Why did not you make use of that business acumen of yours in a better way, in reference to the prorating of the mortgage liens, but instead you relied on what the original mortgagee had done? *A.* And the attorney—

Q. The attorney Lopez-de-Victoria? *A.* Yes, sir.

Q. And did Mrs. Elvira Olivieri receive any money on the day of the execution of the mortgage by Mrs. Elvira Olivieri to you? *A.* No, sir.

Q. Did you retain in your possession the whole $45,000? *A.* Yes, sir, at the request of Mrs. Elvira Olivieri.

Q. To be applied, as you have stated, to the cancellation of the mortgage of the widow of Tous-Soto?

Mr. Lluberas: For that purpose.

Attorney Ochoteco: When was it, Mr. Lluberas, that you agreed with Mrs. Elvira Olivieri-Commins (and when I say "you"

I mean your sisters represented by you) upon the purchase of the "Indios" estate? *A.* After the cancellation of the mortgage of Mrs. Belen, widow of Tous-Soto, we started negotiations for the purchase of the estate.

Q. After the cancellation— *A.* Of the mortgage credit.

Q. Do you remember whether at the time of the ejectment proceeding to which I have referred; at the time of the trial of the ejectment action brought by you and your sisters against Mario Mercado e Hijos, before Judge Roberto H. Todd, on December 20, 1937, I put you the following question [reading from the stenographic transcript in said case]: "When did you agree with Mrs. Elvira Olivieri-Commins, your sisters being represented by you, to purchase the 'Indios' estate?" Answer to the question: "Probably while steps were being taken for the cancellation of the mortgage." *A.* Probably.

Q. I put to you the question and you answered— *A.* Probably.

Attorney Ochoteco: Do you insist in that answer?

Mr. Lluberas: Yes, sir.

Q. Why probably? *A.* I cannot tell you. I have just told you that happened after the cancellation of the mortgage, and when the nephew of Mrs. Elvira Olivieri, whom I met after having effected the payment of the cancellation, told Mrs. Elvira Olivieri.

Q. Was it not on the day following the cancellation of the mortgage? *A.* The following day the deed of sale was signed.

Q. Was the deed of sale signed on the day following the cancellation of the mortgage? *A.* Yes, sir.

Q. Now, my question is this: when was it—I am not referring to the signing of the deed—that you agreed between yourself, your sisters and Mrs. Elvira Olivieri upon the sale? *A.* The day the deed was signed.

Q. On that same day? *A.* The day that the deed of sale was signed.

Q. Was it then that the deal was agreed upon? *A.* The purchase price and everything.

Q. Was that deal closed in May in her residence?

Mr. Lluberas: Yes, sir.

Attorney Ochoteco: Did your notary, my colleague Lopez-de-Victoria, go with you? *A.* Yes, sir.

Q. Did you take with you the deed already drafted? *A.* Yes, sir.

Q. Already drafted? *A.* Yes, sir.

Q. Why do you know that? *A.* Because the sale was signed, and a deed had anyhow to be produced.

Q. Did you notice whether the notary drew out the deed from any bag? *A.* Yes, sir.

Q. Did he bring it already drafted from Yauco? *A.* Yes, sir.

Q. Did you hand it to her for her signature, and the business was concluded? *A.* Yes, sir.

Q. Do you confirm such assertion? *A.* Yes, sir.

Q. I suppose that Mr. Rafael Barletta, whom you know, was present?

Mr. Lluberas: I think he was present.

Attorney Ochoteco: Then was he present either during the discussion or while they were affixing their signatures to the deed of sale in Mayaguez? *A.* I think he was present.

Q. Do not you remember well? Do not you quite remember? *A.* Not exactly.

Q. Do you remember whether I put to you the following question: "Was Barletta present?" and you answered: "Barletta. And the other children. I do not remember the name of the doctor who was here this afternoon, and the other doctor likewise, a dental surgeon." Is this what you remember, that on that day Barletta was there? *A.* Yes, sir.

Judge: What did you answer? *A.* Affirmatively.

Judge: Was attorney Lopez-de-Victoria there? *A.* Yes, sir.

Attorney Ochoteco: Did you know that Mario Mercado e Hijos had been given an option to purchase and lease?

Mr. Lluberas: Yes, I did, and I knew that those people had assigned the same to Mrs. Belen, widow of Tous-Soto.

Attorney Ochoteco: Who told you that Mario Mercado e Hijos had that right to lease and that option to lease and purchase? *A.* Mrs. Elvira Olivieri had informed me that she was indebted to Mrs. Belen de Tous-Soto.

Q. Did Mrs. Elvira Olivieri tell you that Mario Mercado e Hijos held an option to purchase and lease in regard to this estate? *A.* Yes, sir—

Q. Finish your statement. *A.* That Mrs. Elvira Olivieri had told me that she was indebted to Mrs. Belen de Tous-Soto.

Q. I am going to put to you now the same question as in the ejectment proceedings of December 20, 1937, before Judge Todd, in the ejectment proceedings instituted by Messrs. Lluberas-Pasarell against Mario Mercado e Hijos, and I am reading from the stenographic record in that case: "Did you know whether Mario Mercado e Hijos held an option to purchase and lease?" Your answer: "Yes, she had informed me." Then, she told you, and you ratify such statement?

Mr. Lluberas: She had told me that she was indebted to Mario Mercado e Hijos, and then to Mrs. Belen de Tous-Soto.

Attorney Ochoteco: The question is in reference to Mario Mercado e Hijos, whether she told you that Mario Mercado e Hijos held an option to lease and purchase. This is the question I put to you now. *A.* That Mario Mercado e Hijos had assigned the same to Mrs. Belen Tous-Soto.

Q. Let us distinguish. One thing is your knowledge, your belief; and another is what Mrs. Elvira Olivieri told you concerning Mario Mercado e Hijos. The only thing we are interested is whether you knew that Mario Mercado e Hijos held an option to purchase and lease, and whether said question was put to you in that case, and you answered: "Yes, she had herself told me." Did she tell you that? *A.* Yes, probably; of course.

Q. Did you know that? *A.* I knew that she was indebted, and that such obligation included an undertaking.

Q. This question made to you just a short while ago, whether you knew it, is the same question I put you in the ejectment pro-

ceeding, to which I have been referring continuously, instituted before this court, presided by Judge Roberto H. Todd, Jr.; Hermanos Lluberas-Passarell *v.* Mario Mercado e Hijos. My question was this: "Do you know that?" Your answer was: "Of course, I knew it." Do you ratify that statement?

Mr. Lluberas: If she stated that she was indebted, I knew it, of course.

Attorney Ochoteco: Does the witness remember whether on cross-examination in the ejectment proceedings before this court, presided by Judge Roberto H. Todd, Lluberas-Pasarell, plaintiffs, *v.* Mario Mercado e Hijos (I am reading from the stenographic record), your attorney in that action, Lopez-de-Victoria, put to you the following question: "Please tell me . . ." (I am reading from the examination of you by my colleague Lopez-de-Victoria) "Please tell me, when Mrs. Elvira Olivieri talked with you concerning the estate, and she said that she did not sell because she had granted an option, did she tell you in whose favor was that option?" And you answered: "In favor of Mario Mercado e Hijos." That was your answer. My colleague said: "Or of the widow of Tous-Soto?" The answer: "No." "And in whose favor?" "In favor of Mario Mercado e Hijos." "Not in favor of the widow of Tous-Soto?" "Not in favor of the widow of Tous-Soto", you answered. In order to refresh your memory, please pay attention to what I say, because I am reading from the stenographic record. What I have just read. You can refresh your memory by examining the record.

[The witness examines a record presented to him by attorney Ochoteco.]

Attorney Ochoteco: Did you read again what I had already read to you from the stenographic record?

Mr. Lluberas: Yes, sir.

Q. Can you remember it now, that your memory is refreshed. *A.* There is no doubt that I said so in the above case.

Q. Do you confirm this? *A.* I say now that Mrs. Belen Tous-Soto was the holder.

Q. I mean what Mrs. Elvira Olivieri said to you. Do you confirm that you expressed yourself in that case just as appears from the record? *A.* Yes, sir.

Q. That is, that Mrs. Elvira Olivieri-Commins told you that the option was in favor of Mario Mercado e Hijos, and that she never told you that it was in favor of the widow of Tous-Soto?

Mr. Lluberas: The point is this: she did not state that she was bound to her mortgagee. So that when I made that answer to you at the time, but I do not exactly remember what Mrs. Elvira Olivieri might have said—

Attorney Ochoteco: When has your memory served you best, just now, when testifying as to these facts, today, the 14th of November, 1939, or at that time, about December 20, 1937, as regards the conversation had on March 9, 1937? *A.* What I meant to say—

Q. I want to know— *A.* In the above case I might have said so.

Q. That you might have answered as appears from the record? *A.* I believe what the record says.

Q. Do you admit that there is nothing missing from the record? *A.* I admit having answered that.

Q. That is all with the witness.

Cross Examination.

Attorney Tormes: To whom did you deliver the $41,000 of the mortgage credit that had belonged to Mario Mercado e Hijos, which payment was effected on March 8, 1937?

Mr. Lluberas: To Mrs. Belen Tous-Soto.

Attorney Tormes: With whom did you deal to effect that payment? *A.* With Mrs. Belen Tous-Soto and her attorney Zapater.

X-Q. Attorney Fernando Zapater? *A.* Yes, sir.

X-Q. At what time did you effect that payment; during the day or at night? *A.* During the day.

X-Q. Where was the payment effected? *A.* At the home of Mrs. Belen Tous-Soto.

X-Q. Did you stay long in the office of attorney Zapater? *A.* For a while, while signatures were being affixed to I do not remember which papers.

X-Q. How long or how many days elapsed, by the time when you, as the agent of Mrs. Elvira Olivieri-Commins, notified the intention of your principal to pay such mortgage credit to that lady? How many days elapsed from your notification of the intention to pay in her behalf, to the time such payment was effected? *A.* I do not exactly remember, but it must have been a long time.

Attorney Tormes: What do you mean by a long time?

Mr. Lluberas: One month; something like that. Perhaps more. I do not exactly remember.

X-Q. Was the mortgage executed on February 26? *A.* Yes, sir.

X-Q. And the payment effected on March 8? *A.* Yes, sir. The taking of the necessary steps to effect the payment required that long.

X-Q. Do you know Mr. Peralta? *A.* Yes, sir.

X-Q. On some of the occasions when you called at the office of my colleague Zapater, did you see Mr. Peralta there?

Attorney Ochoteco: We object. Nobody has mentioned Mr. Peralta nor has asked the witness being examined in regard to Mr. Peralta.

Attorney Tormes: We know that Mr. Peralta was the manager of Mario Mercado e Hijos, and was the manager in charge of that office.

Judge: The question is admitted.

Attorney Ochoteco: We take exception.

Judge: The question is whether you knew Peralta.

Mr. Lluberas: Yes, sir.

Attorney Tormes: Do you know what office he was filling about March, 1937? *A.* He is the manager of Mario Mercado e Hijos.

X-Q. Was he the manager of Mario Mercado e Hijos? *A.* Yes, sir.

X-Q. Did you meet him in the office of attorney Zapater on

any occasion? *A.* We happened to meet in the office of attorney Zapater.

X-Q. Did you know whether attorney Zapater was the attorney of Mario Mercado e Hijos? *A.* Yes, sir. I knew it.

X-Q. You stated that after having paid the widow of Mr. Tous-Soto the amount of the mortgage credit that had belonged to Mario Mercado e Hijos, you saw the nephew of Mrs. Elvira Olivieri? *A.* Yes, sir.

X-Q. Which nephew? *A.* Emilio Blasini.

X-Q. Where did you see him? *A.* In his home, in the outskirts of Ponce. I do not know the name of the place.

Attorney Tormes: Barrio Canas?

Mr. Lluberas: Yes, sir.

X-Q. On the way to Penuelas? *A.* Yes, sir.

X-Q. That is all with the witness.

Attorney Ochoteco: With the leave of the court. Please tell me [to the witness], you have just stated, answering attorney Tormes, that you saw the nephew of Mrs. Elvira Olivieri, Mr. Blasini. Where? *A.* In his home.

Q. Where is that? *A.* Just leaving Ponce, on the way to Penuelas.

Q. And when did you see him? *A.* On the 8th, in the afternoon, returning to Yauco.

Q. On the 8th, in the afternoon. Was it on the 8th that the mortgage was cancelled? *A.* Exactly.

Q. And did you see him there? *A.* Yes, sir.

Q. Did you go to Mayaguez the next day? *A.* Yes, sir.

Q. That is all with the witness.

Judge: Any further question?

Attorney Tormes: Did the nephew of Mrs. Elvira Olivieri give you any commission?

Mr. Lluberas: Not at all.

X-Q. Did he deliver anything to you for her? *A.* He requested of me, upon knowing that I had in my possession some cancellation papers, to let him have them so as to take them to her, be-

cause he was going to Mayaguez. I do not know what she might have done with them.

X-Q. Did you deliver them to him? *A.* Yes, sir.

X-Q. These promissory notes? *A.* Yes, sir, these promissory notes produced by Mrs. Elvira Olivieri this morning.

X-Q. Did you see again Mr. Blasini after that, on that same day or the next day? *A.* In the evening.

X-Q. On that same day, the 8th? *A.* Yes, sir.

X-Q. Where? *A.* In my home at Yauco.

X-Q. Had he been commissioned for anything? *A.* That Mrs. Elvira Olivieri said—

Attorney Ochoteco: We object as being hearsay.

Attorney Tormes: Did she commission you through Mr. Emilio Blasini?

Mr. Lluberas: To call on her.

Judge: You cannot repeat what she said, but you may answer whether you had been commissioned by her. *A.* To call on her.

X-Q. Were you asked so? *A.* Yes, sir.

Attorney Tormes: Did you go and call on Mrs. Elvira Olivieri? *A.* The next day.

X-Q. That was the 9th of March? *A.* Yes, sir.

X-Q. That is all with you.

Attorney Ochoteco: What time was it when you say Blasini just leaving Ponce on his way to Penuelas? *A.* He was returning.

Q. What time was then? *A.* Between 5:30 and 6.

Q. And when did you see him again in the evening?

Mr. Lluberas: Subsequently, at midnight.

Attorney Ochoteco: What do you mean by midnight? *A.* After eleven o'clock.

Q. After eleven o'clock in that night in Yauco? *A.* Yes, sir.

Q. And at what time on the next day was the deed signed? *A.* In the afternoon.

Q. At what time. *A.* Three or four P.M.

Q. On the following day? *A.* Yes, sir.

Q. Are you sure? *A.* Yes, sir.

Q. At what time did you reach Mayaguez? *A.* About two or three in the afternoon.

Q. Did you reach Mrs. Elvira Olivieri's home about 2 or 3 P.M. *A.* Yes, sir.

Q. When was the deed signed? *A.* Shortly afterwards.

Q. Long afterwards? *A.* What I know is that I returned from there at night.

Q. Was the deed signed at three o'clock?

Mr. Lluberas: I do not remember.

Attorney Ochoteco: If I have not understood the witness wrongly (please correct me if I have); I have understood you saying that the deed was signed about three in the afternoon. At what hour did you arrive? *A.* Between two and three.

Q. And when was it signed? *A.* Long afterwards.

Q. More or less, at what time? *A.* In due time; at 6, 7, or 4. I do not remember.

Q. Had you a talk there? *A.* Yes, sir.

Q. That is all.

Judge: You may withdraw. A five-minute recess.

[The court recesses.]

Judge: The session of the court is opened.

TESTIMONY OF JOSE R. PERALTA.

Attorney Ochoteco: Your name?

Mr. Peralta: Jose R. Peralta.

Q. Your occupation? *A.* Manager of Mario Mercado e Hijos.

Q. How long have you held that job? *A.* Ever since 1934.

Q. Do you know Mr. Rafael Barletta? *A.* Yes, sir.

Q. How long have you known him? *A.* Over five years, approximately; from reference, more or less.

Q. I am showing you Exhibit N for the plaintiff—

Attorney Tormes: Already seen.

Attorney Sabater: Already seen.

Attorney Ochoteco: Please tell me what is this I am showing you. *A.* A wire received by me and signed by Mrs. Elvira

Olivieri-Commins, addressed to Mario Mercado e Hijos, and referring to the receipt of certain offer.

Attorney Tormes: Not to what it refers.

Attorney Ochoteco: Who received it?

Mr. Peralta: I.

Q. When? *A.* On January 23, 1937.

Q. 1937? *A.* Yes, sir.

Judge: Which date? *A.* January 23, 1937.

Attorney Ochoteco: January 23, 1937.

Attorney Tormes: As the wire bears a different date, this is liable to—

Judge: He says that he received it on that date. He does not say that the wire bears that date. That he received it on that date.

Attorney Ochoteco: Do you know who was the Rafael referred to by Mrs. Elvira Olivieri-Commins in said wire? *A.* Mr. Rafael Barletta, married to one of her daughters.

Attorney Ochoteco: Do you know Mrs. Elvira Olivieri-Commins?

Mr. Peralta: Yes, sir.

Q. How long? *A.* Over 5 or 6 years. Ever since I was in the Banco de Ponce.

Q. What was your position in the Banco de Ponce? *A.* I was assistant manager.

Q. Can you tell us whether on March 9, 1937, or at any other time, Mrs. Elvira Olivieri-Commins notined Mario Mercado e Hijos that she had received offers from third parties to buy or lease from her the "Juanita" and "Indios" estates, belonging to her? *A.* No, never. She never notified either Mario Mercado e Hijos or any of the parties interested in the firm.

Q. Do you know whether at any time the partnership Mario Mercado e Hijos, prior to March 9, 1937, entered into negotiations with Mrs. Elvira Olivieri-Commins to either purchase or lease such estates, "Juanita" and "Indios"? *A.* On several occasions.

Q. With whom had such conversations been held? *A.* They

were started with Mr. Rafael Barletta, on January 4, 1937, and were continued on more than twelve or fifteen different occasions with Barletta himself and with her.

Attorney Ochoteco: What kind of offers were they, and through whom and when were they made, approximately, if you remember the date?

Mr. Peralta: The first conversation was had with Mr. Rafael Barletta, in the office of the Central, in the presence of the manager of the firm and your witness.

Q. Can you tell the exact date? *A.* January 4, 1937.

Judge: On what date? *A.* January 4, 1937.

Attorney Ochoteco: Tell me, who was the agent who intervened in the offers to lease the estates "Indios" and "Juanita", from Mrs. Elvira Olivieri-Commins? *A.* On most of the occasions it was Mr. Rafael Barletta, and on some others it was she.

Q. In what capacity did Mr. Rafael Barletta intervene? *A.* He appeared authorized by her, to initiate negotiations in connection with the sale, and on the other occasions in connection with the lease.

Attorney Ochoteco: Did Mrs. Elvira Olivieri-Commins ever object to any of the acts performed by Mr. Rafael Barletta?

Mr. Peralta: Never.

Q. In connection with the sale or lease of the estates "Juanita" and "Indios", referred to in your testimony, did you have an opportunity to talk with Mrs. Elvira Olivieri-Commins? *A.* Yes, sir.

Q. In connection with the steps taken by Mr. Rafael Barletta? *A.* Yes, sir.

Q. Do you remember the date of those occasions? *A.* I think it was about March 4, 1937.

Judge: What date did you mention? *A.* March 4, 1937.

Attorney Ochoteco: Is that the exact date? *A.* Exactly.

Q. Exactly? *A.* Yes, sir, and as an explanation I want to state that on that day they were celebrating what we called "Vic-

tory Banquet", in celebration of the victory of the Democratic Party in the United States, and this is why I remember the date.

Attorney Ochoteco: Did you ever visit Mrs. Elvira Olivieri-Commins in Mayaguez?

Mr. Peralta: On the date I have just mentioned. March 4, 1937.

Q. For what purpose? *A.* The purpose I had in mind when I went to Mayaguez to see Barletta in connection with the business in hand, and which had been the subject of conversations ever since January, that is, the lease of "Indios" and "Juanita".

Q. Of "Indios" and "Juanita"? *A.* Yes, sir.

Q. [Showing these documents to attorneys Tormes and Sabater.]

Attorney Tormes: Already seen, a series of telegrams.

Attorney Ochoteco: Please examine these documents which I show you [producing several telegrams].

[The witness examines the documents produced by attorney Ochoteco.]

A. This is a series of telegrams signed by Mr. Rafael Barletta, the first sent from Mayaguez on January 9, 1937, and addressed to your witness. The second sent from Mayaguez on January 14, 1937, also addressed to your witness. The third from Mayaguez on February 10, 1937, also addressed to me; the fourth from Mayaguez, dated February 5, 1937, addressed to Mario Mercado e Hijos; and the fifth from Mayaguez, dated February 18, 1937, addressed to your witness.

Attorney Ochoteco: Were all received by you?

Mr. Peralta: Yes, sir.

Q. To what do these telegrams refer?

Attorney Tormes: The telegrams speak for themselves.

Attorney Ochoteco: In connection with what were they sent? For which reason? This is the question.

Judge: Admitted.

A. All refer to different interviews upon which we agreed in

connection with the business pending concerning the estates "Indios" and "Juanita".

Attorney Ochoteco: We submit them in evidence, and request that they be marked as separate exhibits, for better handling.

Attorney Tormes: We object to the admission of these telegrams, as being immaterial, impertinent and irrelevant, and because they prove absolutely nothing in connection with the matters in issue.

Judge: The telegrams are five. The court admits them in connection with the testimony of the witness and will attach to them any probatory value the same may have in connection with the evidence as a whole.

Attorney Sabater: We object, and take exception, as being irrelevant matter.

Attorney Tormes: We take exception.

Judge: Let them be marked as follows: 01, 02, 03, 04 and 05. The telegrams are five.

[Attorney Ochoteco shows a paper to attorney Tormes.]

Attorney Tormes: Already seen. A letter dated December 15, 1936, sent by Mrs. Elvira Olivieri-Commins to Mario Mercado e Hijos.

Attorney Ochoteco: This is the letter to which my colleague has made reference, dated December 15, 1936. Please examine this document.

[The witness examines the document presented by attorney Ochoteco.]

Mr. Peralta: This is a letter from Mrs. Elvira Olivieri-Commins, dated in Mayaguez, on December 15, 1936, and addressed to Mario Mercado e Hijos.

Attorney Ochoteco: Why do you know that that letter is from Mrs. Elvira Olivieri-Commins? *A.* I am acquainted with her signature.

Q. Are you acquainted with her signature? *A.* Yes, sir. It contains moreover a note set down in my own handwriting.

Q. We offer this letter in evidence, mainly on account of the

following, which is pertinent: "When these holidays are over, don Rafael is going to speak to you on business, etc."

Attorney Tormes: I would have to cross-examine him before.

Attorney Ochoteco: You may cross-examine him.

Attorney Tormes: On December 15, 1936, when Mrs. Elvira Olivieri-Commins sent this letter to Mario Mercado e Hijos, had Mario Mercado e Hijos leased the "Juanita" and "Indios" estates? *A.* Yes, sir.

X-Q. And did they pay her any rentals? *A.* Yes, sir.

Attorney Tormes: Had Mrs. Elvira Olivieri any funds? Was she able to send you drafts in payment of moneys?

Attorney Ochoteco: That is not the procedure, under the law of evidence. We object.

[Attorney Ochoteco argues thereon.]

Attorney Tormes: If we continue in this way, we are going to make a voluminous record.

Judge: Let us leave the question pending until the examination of the witness is over.

[Attorney Ochoteco shows a document to attorneys Tormes and Sabater.]

Attorney Tormes: Already examined.

Attorney Sabater: Already examined.

Attorney Ochoteco: Please examine this document and tell me what document is this. *A.* This is a letter written by Mr. Rafael Barletta to Mario Mercado e Hijos, from Mayaguez, on February 6, 1937.

Q. Why do you know that it is from Barletta? *A.* Because it is in his handwriting and besides on paper with his letterhead.

Attorney Ochoteco: To be submitted in evidence.

Attorney Tormes: We would have to cross-examine him.

Judge: We will put off its admission until the cross-examination of the witness is over.

Attorney Ochoteco: Did you say that all these letters from Mr. Barletta to Mrs. Elvira Olivieri-Commins were in connection with what?

Mr. Peralta: In connection with the business in hand. They had been discussing in connection with the lease of the estates "Indios" and "Juanita".

Q. Did not they speak of purchase?

Attorney Tormes: By the way it is put it is a leading question.

Attorney Ochoteco: I withdraw it. Did you talk about negotiations? *A.* On former occasions I have testified that the first interview with Barletta concerned the purchase of one of the estates.

Q. The purchase?

Mr. Peralta: Yes, sir. Of one of the estates.

Attorney Ochoteco: When was that? *A.* At the first interview, January 4, 1937.

Q. And as to the conversations about the lease, when did they take place? *A.* On several occasions. If the court grants me leave to avail myself of a memorandum which I carry with me, I may state the dates.

Q. Could the witness, without the necessity of availing himself of his memorandum, recite the dates of the interviews? *A.* I could not, because they are so many—

Q. How and when did the witness prepare such memorandum? *A.* It is extracted from a book which I usually keep on my desk, in connection with the several business appointments pending and of interviews.

Q. Is that where you extracted the memorandum from? *A.* Yes, sir.

Q. Please the court, we beg the court to allow the witness to avail himself of that memorandum, as prepared under the circumstances stated by the witness, so that he might make reference accurately to the different dates of the interviews.

Judge: Is there any objection?

Attorney Tormes: If he prepared it—

Judge: If it was prepared by you yourself, you may avail yourself of it in order to refresh your memory.

Mr. Peralta: The first interview took place on January 4, 1937.

Attorney Ochoteco: Please go slowly. *A.* January 4, 1937, the first interview.

Judge: Just a moment. January— *A.* January 4, 1937.

Attorney Ochoteco: Where? *A.* In the office of your witness, in Central Rufina, Guayanilla.

Q. With whom was the interview? *A.* With Mr. Rafael Barletta, Mr. Mario Mercado being present.

Q. And the second interview? *A.* January 5, 1937, at the same place.

Judge: January—

Mr. Peralta: Five, 1937, at the same place.

Attorney Ochoteco: Who were present? *A.* Mr. Barletta and I only.

Q. And the third interview? *A.* The third interview was made for January 9, but in January 9 he sent a wire postponing it to January 11.

Judge: January 11, of which year? *A.* All of them in 1937.

Q. Where? *A.* In Guayanilla, in the office of your witness in Central Rufina.

Attorney Ochoteco: And the fourth interview? *A.* The interview to take place on January 11 was put off by him to January 13, 1937.

Judge: January— *A.* Thirteen, 1937.

Attorney Ochoteco: Where? *A.* At the same place, that is, in the office of your witness in Central Rufina. On January 13, 1937, the date we had agreed upon, he failed to keep the appointment and your witness on that account sent him a telegram.

Attorney Ochoteco: On what date?

Mr. Peralta: January 13, 1937.

Judge: When you say "he", whom do you mean? *A.* Mr. Rafael Barletta.

Attorney Ochoteco: Did not he come on January 13? *A.* No, sir.

Q. Please—

[Attorney Ochoteco shows a document to the witness.]

Attorney Tormes: Document already seen.

Attorney Ochoteco: What is this I show you? *A.* A copy of the telegram sent by me to Mr. Rafael Barletta, on January 14, 1937, in connection with the appointment we had concerted for January 13, 1937, and which he failed to keep.

Q. Can you tell whether that telegram was sent to him? *A.* Yes, sir, and he answered.

Q. Did he answer? *A.* Yes. sir.

Attorney Ochoteco: In which way?

Mr. Peralta: He answered with another telegram of even date, January 14, 1937.

Q. We offer in evidence this copy of the telegram referred to by the witness in his testimony, in connection with a telegram of that date from Mr. Rafael Barletta to Mario Mercado e Hijos.

Attorney Tormes: We object, as the same is immaterial, irrelevant and impertinent, and does not prove anything in issue.

Attorney Sabater: We object on the same grounds.

Judge: Is it a telegram? Copy of a telegram? It is admitted in connection with the testimony of the witness.

Attorney Tormes: We take exception in behalf of all of the defendants.

Judge: Marked Exhibit P of the Plaintiff.

[The document offered and admitted in evidence as Exhibit P of the Plaintiff is faithfully and correctly transcribed and is attached at the end of this transcript as "Exhibit P of the Plaintiff".]

Attorney Ochoteco: Please tell me. If my memory does not fail me, then you, in view of the fact that Mr. Barletta failed to keep the appointment made for January 13, 1937, sent him a telegram on January 14, which was offered in evidence?

Mr. Peralta: Yes, sir.

Q. What further action has been taken? *A.* On January 14, by means of a telegram in answer to the copy just offered in evidence, he made another appointment for Monday.

Q. Monday, when? *A.* Monday. Here it is said "Monday afternoon". Monday fell on the 18th.

Q. Of thirty-seven? *A.* Of 1937, and on Monday, January 18, Barletta appeared to put off his answer until Thursday, January 21, 1937.

Q. For January 21? *A.* Yes, sir, on a Thursday.

Q. What happened on January 21? *A.* On Thursday, January 21, 1937, Barletta again put off his answer to Saturday, January 23, 1937, and on Saturday, January 23, 1937, Barletta failed to come, but he sent a wire to the Central, excusing himself.

Judge: January—

Mr. Peralta: On Saturday, January 23, 1937, when he had agreed to come, he put it off again; he sent again a telegram excusing himself and promising to come during the course of the following week, that is, the week starting on Monday, January 25.

Attorney Ochoteco: Did he come on January 25? *A.* On Monday, January 25, Barletta came to the office and put off again the answer to Monday, February 1, 1937, and on Monday, February 1,—

Judge: To which date did he put off the answer? *A.* To Monday, February 1, 1937, and on Monday, February 1, 1937, he put off the answer to February 3, 1937.

Q. For February— *A.* Three, 1937.

Q. For February 3. *A.* Three; and on February 3, 1937, which was on a Wednesday, he again put off his answer to Friday, February 5, 1937.

Q. For February— *A.* Five, 1937. On February 5, 1937, which was on a Friday, Barletta did not come, but sent a telegram advising that he had been unable to take a decision in connection with the business on account of his mother-in-law being ill, and stating besides that he would let know which day of the following week.

Judge: When did you say that he promised to come again?

Mr. Peralta: One day of the following week, without fixing a day.

Q. I suppose that the testimony of this witness will take longer.

Attorney Ochoteco: It will be longer.

Judge: Let us put it off until tomorrow morning. Another trial has been adjourned to tomorrow morning, in which a witness is missing. I refer to the testimony of a witness in an action hard fought as the present case. And that testimony will take up at least an hour.

Attorney Tormes: We may come at ten o'clock.

Judge: That is why I say that. There is also the opening of a closed will, but that will not take long. So I think that in order not to waste time we might adjourn to 10:30 in the morning. At 10:30 for you to be here. Mr. Peralta must be present at that time, because his testimony will be proceeded with. The court adjourns to tomorrow at nine A.M.

[The court adjourns.]

Session of November 15, 1939.

FURTHER TESTIMONY OF MR. JOSE R. PERALTA.

Judge: Mr. Peralta was testifying.

Attorney Ochoteco: We will request the court leave in order to change the sequence of our evidence, to interrupt the testimony of witness Mr. Peralta and to place on the stand the telegraph operator of Mayaguez.

Attorney Tormes: No objection.

Judge: Then the testimony of Mr. Peralta is interrupted so as to let the other testimony be given. Let the witness be examined.

TESTIMONY OF MISS CLOTILDE GOMEZ.

[The witness is sworn in by the clerk.]

Attorney Ochoteco: Your name.

Miss Gomez: Clotilde Gomez.

Q. Occupation? *A.* Telegraph operator of Mayaguez Playa.

Q. Please examine this paper I hand to you.

[The witness examines the document delivered to her by attorney Ochoteco.]

Judge: That document has not yet been admitted.

Attorney Tormes: Document already examined.

Attorney Ochoteco: What is this paper? *A.* A telegram.

Q. This paper, before it came into your hands, in whose possession was it? *A.* In the possession of the Insular Telegraph.

Q. Did you bring it by order of the court? *A.* By order of the court.

Attorney Ochoteco: Where did you get this paper from, was it on file?

Miss Gomez: In the telegraph office of Mayaguez.

Q. Do you know that of your own knowledge? *A.* Of my own knowledge.

Q. Do not you know who sent this telegram? *A.* I presume, as it was long ago, that it was taken by Mr. Rafael Barletta to my office.

Q. Why do you presume it? *A.* Because everybody who sends a telegram has to sign it when delivering it, and his signature appears crossed out.

Q. Are you acquainted with his signature? *A.* If it is shown to me, as he has sent messages so often, that I am acquainted with it.

Q. Whose signature does this one crossed out resemble? *A.* It looks like the signature of Mr. Barletta.

Q. Do you know Mr. Barletta's handwriting? *A.* I have forwarded for him many telegrams.

Q. This handwriting, whose handwriting does it look to you? *A.* It looks to me as his handwriting, but not the text.

Q. I mean his signature. *A.* I presume it is his; every telegram sent must be signed by the person who deposits it.

Attorney Ochoteco: With the leave of the court—

Judge: What does the signature say?

Miss Gomez: Elvira Olivieri.

Q. The one crossed out, what does it say?

Attorney Tormes: The court has not so far seen the document, and has put the question.

Judge: I have put the question because mention has been made of a signature, and the court is entitled to make the proceedings clear and not to leave any doubt when a question is put. I ask whose signature is it because it might be, instead of that of Barletta, that of somebody else. What do the words crossed out say? *A.* Rafael Barletta.

Q. The purpose of the question was to identify what is stated there.

Attorney Ochoteco: Let it be identified for the purpose of submitting the same in evidence at the proper time. Let us finish with this evidence for the plaintiff. Will the witness kindly read these words with the legend "January 23, 1937"?

Miss Gomez: That it was deposited on that date.

Attorney Ochoteco: And this other india rubber stamp? *A.* That was handed in the office at Mayaguez Playa.

Q. This india rubber stamp, who stamped it? *A.* Myself.

Q. You stamped it? *A.* Yes, sir.

Q. Is this the time it was received? *A.* The same was received at 9:52 in the morning.

Q. Which day? *A.* January 23, 1937.

Q. Are you sure? *A.* Quite.

Q. This is all.

Judge: The other side may examine the witness.

Attorney Sabater: Tell me, madam, how many telegraph offices are there in Mayaguez? *A.* Two.

X-Q. One at the Playa? *A.* Yes, sir.

X-Q. And another in the town?

Miss Gomez: Yes, sir.

Attorney Sabater: In which of the two offices do you work? *A.* Only in Mayaguez Playa.

X-Q. Have you ever worked in the town? *A.* I have not worked in the town for the last fifteen years.

X-Q. Where did you get this telegram in order to bring it to this court? *A.* It was delivered to me by the chief of the office in town.

X-Q. Are you in charge of the file in the town? *A.* There is no file in my office. It is a branch office.

X-Q. Who is the keeper of that file, you or somebody else? *A.* The manager of the telegraph office, Mr. Villegas, of Mayaguez.

X-Q. In the period between 1937 and now, possibly many people may have had to do with the file where this wire was kept? *A.* No, sir.

X-Q. When did you see it for the first time? *A.* After I had dictated it, until yesterday afternoon.

X-Q. Do you know whether anybody else, besides the manager, had to do with the file in the town telegraph office?

Miss Gomez: I think that the only person who has control of the file is the manager of the office.

Attorney Sabater: You say that you know that you have forwarded many telegrams from Mr. Rafael Barletta? *A.* On many occasions.

X-Q. If I place before you several signatures from different people, among which this signature of Mr. Rafael Barletta, could you categorically state which of said signatures was that of Mr. Barletta? *A.* On telegrams, perhaps.

X-Q. But not on deeds? *A.* No, sir.

X-Q. So that you categorically cannot state that you know the signature of Mr. Rafael Barletta? *A.* On telegrams.

Judge: What do you mean "on telegrams"? *A.* That he has affixed his signature to several telegrams in my presence.

Q. Has he signed different papers? *A.* No, sir.

Attorney Sabater: Cannot you positively state that Mr. Rafael Barletta personally took the telegram on that day?

Miss Gomez: Pursuant to the orders from the telegraph office, anybody who hands in a telegram must sign it; must sign a telegram when handing it. There is an order from the government.

Attorney Sabater: Did not Mr Barletta sign the telegram in your presence? *A.* Surely he did, because upon seeing the name of Mrs. Elvira Olivieri thereon, he had to affix his name for me to accept the telegram; otherwise we may refuse to take it.

X-Q. Do not you remember whether it was Mr. Rafael Barletta? *A.* I presume so, because the only signature there is that of Mr. Rafael Barletta.

X-Q. Nor do you know either who crossed out the signature there? *A.* As every extra signature to a telegram must be charged for, I presume that on telling him of the extra charge he meant to cross out that signature so as to pay for the last one only.

X-Q. That is all.

Attorney Ochoteco: That is all.

Judge: You may go.

Attorney Ochoteco: Will you grant me a little more time so as to submit this telegram in evidence?

FURTHER TESTIMONY OF MR. JOSE R. PERALTA.

Attorney Ochoteco: Your name?

Mr. Peralta: Jose R. Peralta.

Q. This is a telegram referred to by the preceding witness; Mr. Peralta, please examine this paper.

[The witness examines the paper handed to him by attorney Ochoteco.]

Q. Have you examined it? *A.* Yes, sir.

Q. Whose signature is this that appears first? *A.* The signature crossed out is that of Mr. Rafael Barletta.

Q. Why are you so positive that this is his signature? *A.* I know Mr. Rafael Barletta's signature.

Q. How have you become acquainted with his signature? *A.* By reason of several negotiations carried out by him in the name of his mother-in-law, Mrs. Elvira Olivieri-Commins, with the firm of Mario Mercado e Hijos.

Attorney Ochoteco: For how many years?

Mr. Peralta: Ever since December, 1934.

Q. Whose signature is the second one? *A.* Elvira Olivieri's.

Q. Are you acquainted with the signature of Mrs. Elvira Olivieri-Commins? *A.* Yes, sir.

Q. How is that? *A.* By reason of the dealings between her and the firm of Mario Mercado e Hijos.

Q. Are you used to see it frequently? *A.* Yes, sir.

Q. Is this the signature of Mrs. Elvira Olivieri-Commins?

Attorney Tormes: We object.

Attorney Ochoteco: I withdraw the question. Whose is this second signature which appears on this document? *A.* The signature of Mrs. Elvira Olivieri-Commins. Now the handwriting does not seem to be hers.

Attorney Ochoteco: How can you tell that this is the signature of Mrs. Elvira Olivieri-Commins.

Mr. Peralta: It does not look to me like the signature of Mrs. Elvira Olivieri-Commins. It looks to me like that of Mr. Barletta himself.

Q. We submit in evidence the telegram that has been referred to in the testimony of the two witnesses, dated January 23. 1937, Mayaguez Playa.

Attorney Tormes: Over our objection, because this is immaterial, impertinent and irrelevant, and because nothing is proven in the action prosecuted herein. By means of this telegram it is sought to prove the alleged agency or representation of Mr. Rafael Barletta, and the record already contains the testimony of a witness for the plaintiff, that is, Mrs. Elvira Olivieri, who testified as to the scope of the activities of Mr. Barletta in connection with her interests.

Attorney Ochoteco: For the purpose of a better understanding of the record, we want to state that the object, among others, pursued in submitting this telegram is in order to clear up the date of the telegram marked Exhibit N, that is, that it was not on January 23, 1936, but on January 23, 1937.

Attorney Tormes: We insist on our objection.

Attorney Sabater: We also object to the submission of this document because we consider it irrelevant, and should the document be submitted in evidence for the purposes of proving an alleged relation of agent and principal between Mr. Rafael Barletta and Mrs. Elvira Olivieri-Commins, we object, because the telegram itself does not show the signature of Mrs. Elvira Oliv-

ieri-Commins, nor does it appear that such handwriting is the handwriting of Mr. Rafael Barletta.

Judge: The court admits the same and will attach to it whatever value it may have in connection with the rest of the evidence. And let it be marked Exhibit Q of the Plaintiff.

Attorney Sabater: We take exception.

Attorney Tormes: We take exception.

[The document offered and admitted in evidence as Exhibit Q of the Plaintiff is faithfully and correctly transcribed and is attached at the end of this transcript as "Exhibit Q of the Plaintiff".]

Attorney Ochoteco: I will request the stenographer to read the last question put to the witness yesterday afternoon.

[The stenographer reads the last question put to the witness on the day before.]

Attorney Ochoteco: Will the witness kindly proceed with his testimony regarding the questions put to him yesterday afternoon?

Mr. Peralta: After the other telegram of February 5, 1937, on February 10, that is, in the course of the following week, a new telegram was received signed by Barletta.

Judge: All these documents are dated in 1937? *A.* Yes, sir. On February 10 another telegram was received signed by Barletta, where he announced his visit for the next day, in which he was saying that he would be present on February 11. On February 11 Barletta did not appear either, but said that he would be present on Friday, February 12. On Friday, February 12, Barletta called at the office and in the presence of Mario Mercado, Jr., and your witness, he told us that Mrs. Elvira Olivieri—

Judge: You are holding a paper and is that to which you are referring?

Mr. Peralta: He told us that Mrs. Elvira Olivieri—

Judge: Which day was that? *A.* Friday, February 12.

Q. Did Barletta come? *A.* Yes, sir. And told us, Mr. Mario Mercado, Jr., and myself, that Mrs. Elvira Olivieri-Commins re-

fused to sell the tracts of land and that she had made up her mind not to sell the tracts of land.

Attorney Ochoteco: Which tracts of land are you referring to? *A.* The portion of the "Indios" estate to which she was entitled after the actual partition between her and her sister.

Judge: Was he Mr. Mario Mercado, Jr.? *A.* Yes, sir. And that on the contrary she was asking for offers to lease.

Q. That was asking offers to lease, who? *A.* Mrs. Elvira Olivieri-Commins.

Q. Did Barletta say that? *A.* Yes, sir.

Judge: Then Mrs. Elvira Olivieri was asking for an offer to lease?

Mr. Peralta: Yes, sir. And that she would give her answer to such a proposal to lease on Monday, February 15. The week that ended February 13 your witness was ill.

Attorney Ochoteco: Which witness do you mean? *A.* Myself.

Judge: Did she then say that she would give an answer to that proposal? *A.* During the week commencing on Monday, February 15.

Q. During the week commencing Monday, February 15, 1937? *A.* Yes, sir. And on Saturday, February 13, your witness on account of illness was absent from his office.

Q. Which day? *A.* On Saturday, February 13, and I was sick during the whole week until February 20, 1937.

Attorney Ochoteco: You were what? *A.* Sick, absent. Absent from the office. During my absence, on February 18, 1937, another telegram was received, signed by Barletta, in which he said: "I will be there tomorrow".

Judge: On which day was it written?

Mr. Peralta: On February 18, 1937. I understand that he was on the 19th in Guayanilla and on failing to meet me in the office he saw Mario Mercado in his office in Ponce.

Q. Who? *A.* Barletta.

Q. On which day? *A.* On the 19th. On the day following the receipt of the telegram. On February 26, 1937, Barletta called

again at the office but he did not come straight to my desk; he went to the office of the auditor of the firm.

Q. On which day? *A.* On February 26, 1937. He went straight to the office of the auditor and handed to him $420 in twenty-dollar bills, of which $200 were to be credited to the current account of Mrs. Eudosina de Barletta with the firm Mario Mercado e Hijos.

Q. How much did he hand? *A.* Four hundred twenty dollars in twenty-dollar bills.

Judge: To pay what—

Mr. Peralta: To be credited to a contract of Mrs. Eudosina B. de Barletta, wife of Mr. Barletta, and the balance of two hundred twenty dollars to cover the amount of a check that had been negotiated and had been returned for lack of funds by the bank drawn against. On that same day, after effecting the above payment, he opened the door to our office but did not go in; standing at the door, while grabbing the door, he told me that he had been unable to come and give an answer in connection with the business of the lease under discussion, because he had been away from Puerto Rico. He said to me that he had paid that four hundred twenty dollars on account and that he thanked us for our courtesy in withholding the check without funds which they had cashed, and that he would call again next day at my office to take up again our talk. Barletta failed to come either on February 27 or on March 1. On March 4 I saw him at Mayaguez, in his residence, where I had called so as to have a talk with him, in view of his delay in giving an answer in the pending negotiations.

Attorney Ochoteco: Did you go to see him together with Mrs. Elvira Olivieri?

Mr. Peralta: I went to meet Barletta. On that day I called at his house, but could not locate him and finally he received me and I saw Mrs. Elvira Olivieri, who was staying in his residence.

Attorney Ochoteco: Did not you see Barletta on March 4? *A.* I saw him later on.

Q. Did you see him later on, on the same day? *A.* Yes, sir.

Q. Did you see Mrs. Elvira Olivieri first? *A.* Yes, sir. I went to pay my respects to Mrs. Elvira Olivieri, in the company of Julio Vidal, from Mayaguez; I went for an exchange of views, and she told me that she had the money to cancel the mortgage. To my question as to where she had found the money, she told me that that was a secret, and that her attorney had warned her not to divulge it. After that, at 10:30 or 11, Barletta came, and I talked with him.

Q. Where? *A.* In the very residence of Mrs. Elvira Olivieri, and he told me of his displeasure by reason of his inability to close the deal.

Q. To which deal was he referring?

Mr. Peralta: The lease, and that he hoped to close it within a week. I did not hear from Barletta until March 6, and I could not locate him again until March 8, when I saw him in the office of attorney Zapater, in company of Mr. Manuel Francisco Lluberas. We met by chance in the office of attorney Zapater. I had a talk with him and he told me that he had in mind to see me on that day or on the next day.

Attorney Ochoteco: What for? *A.* To give an answer in connection with the business.

Q. Which business? *A.* The lease.

Q. Were you talking about a lease? *A.* About the deal, the subject of our conversation since January, of the estates "Juanita" and "Indios". That the business was good and that he thought he could close it that afternoon or on the next day in the morning. He told me this in the presence of attorney Zapater.

Judge: On what date? *A.* March 8, 1937.

Attorney Ochoteco: At what time?

Mr. Peralta: In the afternoon, between 3 and 3:15 in the afternoon.

Judge: In which town? *A.* In Ponce, in the office of attorney Zapater.

Attorney Ochoteco: Do you mean attorney Fernando Zapater? *A.* Yes, sir.

Q. Did Mr. Lluberas accompany Mr. Barletta? *A.* He was in the company of Mr. Lluberas. Lluberas was coming down at that moment and I then got in touch with Barletta. He told me that he had in mind to see me that afternoon, and if not on the next day in the morning, and that he hoped to close the lease business that was pending.

Q. Proceed with your statement. *A.* Afterwards I did not see Barletta until April 6, 1937, in the residence of Mrs. Elvira Olivieri, in Mayaguez Playa.

Judge: Which date? *A.* April 6, 1937.

Q. Of which year? *A.* Nineteen hundred thirty-seven. That is, in connection with the demand served by attorney Porrata on Mrs. Elvira Olivieri in connection with a business deal between this lady and Mr. Manuel Francisco Lluberas and sisters and with Mr. Emilio Blasini.

Attorney Ochoteco: Please answer the following question before proceeding with your testimony: In view of what was Mr. Barletta closing or discussing the terms of a lease in behalf of Mrs. Elvira Olivieri-Commins with Mario Mercado e Hijos?

Attorney Tormes: We will object, because there is involved an alleged agency, and concerning such alleged agency the principal already testified yesterday and explained to the court the scope of such agency and the mission entrusted by her to Mr. Barletta.

[Attorney Tormes argues at length on his objection.]

Attorney Ochoteco: We respectfully sustain, without prejudice to the opinion of the court, that there is now more than sufficient evidence admitted by this court for reaching now the conclusion, for the purposes of the admissibility of the evidence, that Mr. Rafael Barletta was acting in this specific case, and in connection with Mario Mercado e Hijos, as a special agent, if that is the word, of Mrs. Elvira Olivieri-Commins.

[Attorney Ochoteco argues at length thereon.]

Judge: The question ought to be changed.

Attorney Ochoteco: Did Mr. Barletta ever mention to you that

somebody else was interested in the purchase or lease of the "Indios" and "Juanita" estates?

Attorney Tormes: We object as being immaterial. The statements of Mr. Barletta in such a way cannot prejudice Messrs. Lluberas and Blasini, third parties represented by us.

[Attorney Tormes argues on his objection.

[Attorney Ochoteco argues thereon.]

Judge: Objection sustained. If such question were put under circumstances that made it clearly admissible, the court would admit it, but the term "ever" is very vague, very indefinite. Objection sustained.

Attorney Ochoteco: Please tell me, do you know whether firm of Mario Mercado de Hijos, at any time prior to or subsequent to March 9, 1937, received any written notice or otherwise from Mrs. Elvira Olivieri-Commins, or from Mr. Barletta, from Mr. Rafael Barletta, that Mrs. Elvira Olivieri had received offers to purchase or lease in connection with the parcels "Juanita" and "Indios"?

Judge: This question was put yesterday.

Attorney Ochoteco: I put it to Mrs. Elvira Olivieri.

Judge: You may answer the question.

Mr. Peralta: In no occasion, either before or after March 9, 1937, neither verbally nor in writing, nor through any other channel, was the firm served with the notice from Mrs. Elvira Olivieri-Commins, for either selling or leasing these estates to a third person.

Attorney Ochoteco: Please tell me, and pardon me for interrupting your testimony, the course of your testimony. In your testimony you have stated that on a certain date you had gone to Mayaguez? *A.* Yes, sir.

Q. To the residence of Mrs. Elvira Olivieri-Commins? *A.* Yes, sir.

Q. Be kind enough to proceed with your testimony where you left it off. *A.* On April 6, 1937, I accompanied attorney Pedro M. Porrata, together with Mr. Pastor S. Mandri, Mr. Gilberto Barbosa-Sicardo, Mr. Ulisis Petrilli and Mr. Neri Vazquez, all of

them from Ponce, except Mr. Sicardo, who resides in Catano. We went to the residence—

Judge: When was that?

Mr. Peralta: On April 6, 1937. We called on Mrs. Elvira Olivieri-Commins, in the Playa known as "Guanajibo", in Mayaguez, on the road leading to the "Correccional". We reached the residence of the above lady in the afternoon, between two and three P.M., and attorney Porrata, Mr. Mandri and myself went in.

Attorney Ochoteco: What for did you go there? *A.* To accompany attorney Porrata, who was carrying a certain amount of cash and who was going to serve a demand in connection with the sale made by Mrs. Elvira Olivieri to Messrs. Lluberas, of the parcel belonging to Mrs. Elvira Olivieri-Commins out of the "Indios" estate.

Q. In what capacity were you serving the firm? *A.* As manager.

Q. And Mr. Pastor Mandri? *A.* Its director.

Q. And attorney Porrata? *A.* Our attorney, who went there as a notary to serve the demand.

Judge: Mr. Pastor Mandri was there, and who else?

Mr. Peralta: Attorney Porrata, and Mr. Ulises Petrilli as witness.

Q. From Ponce? *A.* Yes, sir. He went to serve as a witness. Neri Vazquez, was also a witness in connection with the service of the demand, and Mr. Barbosa Sicardo, from Catano, a stenographer, to take down the answer from Mrs. Elvira Olivieri to the demand to be served by the notary. We got there about two or three.

Attorney Ochoteco: How much were you carrying? *A.* Forty-five thousand dollars in cash.

Q. Bank notes? *A.* Yes, sir. And we reached the residence.

Q. Who was carrying the money? *A.* The notary. And we reached the residence of Mrs. Elvira Olivieri between two and three P.M., and we found her alone in the parlor of her residence and told her the purpose of our visit. Attorney Porrata handed

to her a copy of the notarial demand to be served while he was reading another copy, and asked her leave to call the stenographer and the witnesses into the parlor, to be present at the notarial act, which permission was courteously granted by Mrs. Elvira Olivieri. During the reading, a conversation sprang between Mrs. Elvira Olivieri, the notary, Mr. Mandri and your witness. And during the conversation, which was taken down by the stenographer Mr. Barbosa-Sicardo, she admitted that about January, 1937—

Attorney Tormes: We object to any admission from Mrs. Elvira Olivieri, especially as to the defendants Lluberas and Blasini. Any admission from that lady is inadmissible for the purpose of affecting the title as third parties of Messrs. Lluberas and Blasini, the subject matter of the action against them. Yesterday Mrs. Elvira Olivieri took the stand as a witness for the plaintiff, and was sworn in, and concerning any admission from her she ought to have been examined at the time. In our opinion no other evidence regarding such admission should be submitted.

[Attorney Tormes argues on his objection.

[Attorney Tormes cites Section 35 of the Law of Evidence; *Muniz* v. *Cortes*, 33 P.R.R. 276; *Marrero* v. *Skerret et al.*, 17 P.R.R. 540; and Jones on Evidence, s. 241, pages 461 and 462.]

Attorney Sabater: We also object to the witness testifying on admissions of Mrs. Elvira Olivieri-Commins on the ground that the person who made the alleged admission was made to take the stand here as a witness for the plaintiff; she was examined at length, and I perfectly remember that my colleague Ochoteco asked her whether she remembered the day on which Mr. Peralta had called at her home, that is, April 6, 1937, and I remember her words when she said: "On the day they forced their way into my home", and no question was put to her on such admission. He might have brought up the former evidence and then this corroboration of such admission; but in this way we think it is inadmissible.

[Attorney Sabater argues on his objection.]

Attorney Ochoteco: Please the court, in our opinion the point is not as material as my distinguished colleague thinks.

[Attorney Ochoteco argues thereon, and cites Section 397 of the Code of Civil Procedure, subdivision 3.]

Attorney Tormes: In order to gain time, let the witness proceed with his testimony so that the court might see.

Attorney Ochoteco: Is the objection withdrawn?

Attorney Tormes: I had not started to say—

Judge: Let us hear the argument, because if the point comes up later on—

Attorney Ochoteco: Does not my colleague withdraw his objection?

Judge: The first point to be discussed is the matter of the date, whether it was prior or subsequent.

Attorney Ochoteco: I was following my colleague in the order of his argument.

Judge: It is for the purpose of simplifying.

[Attorney Ochoteco continues arguing thereon at length.]

Judge: It is now late. It is 5:08 P.M., and we have been working ever since nine A.M. Of course, the court might settle this point now, but as the parties have offered to submit authorities, the court puts off this question to be settled in the morning, so as to give the parties an opportunity to submit authorities. Therefore the point is left pending. Let the stenographer mark the question so as to find it tomorrow if he has to read out the question. The incident as to the admission is left pending. Mr. Peralta will continue tomorrow.

SESSION OF NOVEMBER 16, 1939.

Judge: There was pending decision an objection to the question put to the witness Mr. Peralta. Let Mr. Peralta proceed testifying. Is there any further jurisprudence to be submitted before?

Attorney Ochoteco: It would be better to hand to your Honor the text of all the authorities.

Judge: You might as well read it so as to be heard by the other side, since everybody here knows English.

Attorney Ochoteco: Wigmore on Evidence, volume 2, page 518, Sections 1085 and 1086.

[Attorney Ochoteco reads Sections 1085 and 1086 of Wigmore on Evidence, and argues thereon at length.]

Judge: The other side?

[Attorney Tormes argues thereon at length, citing 170 Cal. 631.]

Judge: Yesterday there was a wide discussion on the arguments from both sides, on the cases cited and on the jurisprudence, and of course the court thinks in view of the way in which the juridical point has been submitted . . . paragraph 11 of the complaint actually alleges collusion, and deliberate purpose of defrauding the plaintiff. And as it now happens that the plaintiff is submitting its evidence in support of its complaint, the court, in accordance with the jurisprudence just cited, especially Section 1086 of Wigmore on Evidence, page 611, volume 2, second edition, overrules the objection made by the defendant to the question and allows the witness to answer.

Attorney Tormes: We take exception on the grounds already stated.

Attorney Sabater: We take exception in behalf of my defendant clients.

[Attorney Sabater argues thereon and cites 36 Cal. 205 and 38 Cal. 278.]

Judge: The witness may answer the question.

Mr. Peralta: About the month of January, 1937, subsequent to the death of Mr. Delgado, who was the candidate to the mayoralty of the city of Ponce, she had received a visit from Mrs. Pasarell-de-Delgado, who finding her sick, asked her what was the matter with her, and Mrs. Elvira Olivieri answered that she was worrying a lot on account of some obligation secured by her estates, and that was worrying heavily on her. Mrs. Pasarell-de-Delgado told her not to worry—

Attorney Tormes: Just a moment—

Attorney Ochoteco: It is all right. Please testify to what you know, of what Mrs. Pasarell said—

Attorney Sabater: We object.

Mr. Peralta: Mrs. Elvira Olivieri said that Mrs. Elena Pasarell-de-Delgado offered her money.

Attorney Tormes: We move to strike out what she might have said.

Attorney Ochoteco: What she said. *A.* I am stating what Mrs. Elvira Olivieri said.

Q. You cannot state what Mrs. Elvira Olivieri said that Mrs. Elena Pasarell may have said. You may say what Mrs. Elvira Olivieri did by virtue of what Mrs. Elena Pasarell said, without testifying to what she may have said.

Mr. Peralta: Mrs. Elvira Olivieri told me that she had got the money from that lady.

Attorney Ochoteco: From what lady? *A.* From Mrs. Pasarell-de-Delgado, in order to cancel the mortgage, and that such money had been secured by her on the condition imposed by Mrs. Delgado herself that the estate "Cupey"—

Attorney Tormes: He cannot testify as to the terms imposed by that lady.

Attorney Ochoteco: You cannot testify to what Mrs. Pasarell may have said to Mrs. Elvira Olivieri. You may testify as to what Mrs. Elvira Olivieri told you that she had done and that she was bound to do. *A.* She told us what she had done as the result of this conversation with this lady; that she had borrowed the money from her, and that said money had been given on the expressed condition that the estate "Cupey" be sold to her children, Messrs. Lluberas, here present.

Attorney Tormes: We move to strike out. Mrs. Elvira Olivieri appears as saying what was said to her by Mrs. Elena Pasarell, who is not a witness for the defendants.

Attorney Ochoteco: We first consented, because we understood that my colleague was right in objecting to the witness testifying

as to what Mrs. Elena Pasarell had said to Mrs. Elvira Olivieri, but now the situation is different. Now the witness is testifying to what Mrs. Elvira Olivieri told him that she was bound to do or had done.

[Attorney Ochoteco argues thereon.]

Attorney Tormes: We beg the court to bear in mind that these statements were made on April 6, 1937, subsequently to the signing of the deed before Lopez-de-Victoria, deed number 40, which was signed on March 9, 1937, and now he is referring to what Mrs. Elvira Olivieri did as a result of an imposition, of a warning or of an agreement made by her with Mrs. Elena Pasarell, widow of Delgado.

[Attorney Tormes argues thereon.]

Judge: The court admits the statements.

Attorney Tormes: We take exception.

Attorney Sabater: We take exception.

Judge: Please proceed.

Mr. Peralta: That she should sell the estate to the Lluberas brothers and that the estate "Juanita"—

Attorney Ochoteco: Do you mean the defendants? *A.* Yes, sir. And besides that the "Juanita" estate should be leased to the nephew of Mrs. Elvira Olivieri and son-in-law of Mrs. Pasarell, Emilio Blasini, a co-defendant herein. I want further to explain that in making reference to the "Cupey" estate I refer to the parcel belonging to Mrs. Elvira Olivieri in the partition of the property belonging to her and her sister, a part of the estate "Cupey" or "Indios".

Judge: "Cupey"? *A.* Yes, sir. A portion of the estate known as "Indios". During this conversation there came out from one of the rooms of the house a son of Mrs. Elvira Olivieri, a dentist by profession, and called his mother's attention to the fact that her statements were being taken down by a stenographer, and forbade the stenographer to proceed. He forbade the stenographer to proceed with the taking of the notes; the doctor further told his mother that she should not testify to anything unless it

was assisted by her attorney, Sabater. The doctor himself went out to fetch Sabater and returned shortly afterwards, saying that Sabater was at that moment in the District Court of Mayaguez, or in one of the Mayaguez courts, on professional duties, for which reason he was unable to come. Some two hours later on, when it was almost dark, attorney Sabater came and the notarial business of attorney Porrata terminated. I remember that on the street, in a typewriter and lit up by matches, the demand was typed, terminated and signed and each of us went home.

Attorney Tormes: We move to strike out everything stated by the witness in this connection because there are involved statements and testimony given subsequent to March 9, 1937, by which time Mrs. Elvira Olivieri had already sold the "Indios" estate and leased her "Juanita" estate to Emilio Blasini, as the acts involved took place subsequently, without either Blasini, or any of the other defendants by the name of Lluberas, being present during such testimony.

Attorney Ochoteco: We submit the point.

Attorney Sabater: We also move to strike out from the testimony of the witness the last statement in connection with the admission of Mrs. Elvira Olivieri.

[Attorney Sabater argues thereon.]

Judge: The other side?

Attorney Ochoteco: We submit the point.

Judge: Motion to strike out overruled for the reasons stated.

Attorney Tormes: We take exception.

Attorney Sabater: We take exception.

Judge: Did you say that during the conversation Mrs. Elvira Olivieri-Commins was told not to make any further statement until the arrival of attorney Sabater?

Mr. Peralta: Yes, sir.

Judge: Jose Sabater?

Attorney Sabater: My name is Jose O. Sabater.

Judge: To whom were you referring? *A.* To the father of the gentleman, without the "O". There is a detail I want to explain.

All these events that I am reciting and repeating before the Honorable Court, in connection with the call made on April 6, 1937, at the home of Mrs. Olivieri—

Attorney Tormes: We object to the witness' statements on his own account.

Judge: Do not make statements unless you are asked.

Mr. Peralta: It is a detail that I had overlooked.

Attorney Ochoteco: Please answer to the questions put to you. *A.* During the course of the conversation Mr. Rafael Barletta arrived, and the dentist told Barletta that since he had been involved in those matters connected with the lease of the "Juanita" estate and the sale of the "Indios" estate, he should continue—

Attorney Tormes: We move to strike out as being immaterial. The dentist, doctor Blasini, is not a party to this action and anything said regarding him is quite immaterial, and likewise what Barletta might have said to him is not an evidential element.

Attorney Sabater: We likewise move to strike out.

Attorney Ochoteco: We submit the question.

Judge: The statements are stricken out.

Attorney Ochoteco: We take exception. Now, to the witness, do you know the estates "Indios" and "Juanita"?

Mr. Peralta: Yes, sir. I know them.

Attorney Ochoteco: Personally? *A.* Yes, sir.

Judge: Do not forget that today is the last day, and that you have to hurry up a little.

Attorney Ochoteco: Do you know them personally? *A.* Yes, sir, I know them personally.

Q. Can you tell me how much that estate was worth around the months of February or March, 1937? *A.* The value of this estate, as far as "Juanita" is concerned, owing to the fact that it has twice the area of cane land, is twice as much, as material values are concerned, as the "Indios" estate, and when I refer to the "Indios" estate I mean that part thereof called "Cupey".

Attorney Tormes: I move to strike out the answer as impertinent and irrelevant.

Attorney Ochoteco: We submit it.

Judge: Motion denied.

Attorney Tormes: We take exception.

Attorney Sabater: Very respectfully we take exception.

Judge: Could you state the amount of the value?

Attorney Ochoteco: He says that it is twice as much. Did the witness say twice as much?

Mr. Peralta: Yes, sir. That the "Juanita" estate is worth twice as much or more than the parcel known as "Cupey", part of the "Indios" estate

Q. Do you mean the interest therein belonging to Mrs. Elvira Olivieri? *A.* Yes, sir. That is, such part of it as was sold to the Lluberas brothers, in comparison with the "Juanita" estate, leased to Mr. Blasini.

Q. Did you say that you are assistant manager of the Banco de Ponce? *A.* Yes, sir.

Attorney Tormes: Admitted.

Attorney Ochoteco: From your banking experience, could you tell us the usual rate of interest on loans?

Attorney Tormes: I object.

Attorney Ochoteco: A long-term loan, and a short-term loan, in banking parlance; what is the usual rate of interest on the larger one or the lesser one, according to the longer or shorter term of the loan?

Attorney Tormes: We object. All such transactions are subject to circumstantial needs. There is no fixed rule for closing a deal.

[Attorney Tormes argues thereon.]

Judge: The other side?

Attorney Ochoteco: In our opinion the question is pertinent. We are at this moment, as expressed by the Supreme Court, trying to prove a certain action of a certain nature, and we think that all these elements of proof constitute the evidence on the action.

[Attorney Ochoteco argues thereon.]

Judge: The question is admitted.

Attorney Tormes: We take exception as not being in issue.

Attorney Sabater: We object, and we take exception at the same time, to the admission of the question.

Judge: Let it be recorded. Objected to first.

Mr. Peralta: From my experience in the banking business for more than fifteen years, I can say that the loan market in Puerto Rico is controlled by the market in New York. New York is the banking center of America, and second to the London market. For that reason, in the case of colateral or mortgage security, for short terms, the rate of interest is pretty low. For instance, loans secured by Government bonds, at short terms, for fifteen days, for twenty days or for a month, are obtainable at the rate of one per cent annually, and the practice in Puerto Rico is controlled by the practice in New York.

Judge: Please proceed. Any further question?

Attorney Ochoteco: That is all.

Attorney Tormes: We want to state for the purpose of the record that during the whole day of yesterday and so far today Mrs. Elvira Olivieri-Commins has not appeared in court because she stayed in her home in Yauco, pending to be called. And that is why she is not present in court. Does my colleague accept the statement?

Attorney Ochoteco: Yes, sir. And we are ready to do anything for her comfort.

Cross Examination.

Attorney Sabater: Please, Mr. Peralta, do you remember, about February 23, 1938, in a case entitled number civil 1086, ejectment proceeding, brought by Manuel F. Lluberas against Mario Mercado e Hijos, defendants, do you remember having testified on that date before this court?

Mr. Peralta: I remember the case, and I remember that I testified, although I could not for certain tell you that it was on that date.

Attorney Sabater: Do you remember more or less that you testified? A. Yes, sir.

Attorney Ochoteco: We admit that it was on the date referred to by my colleague.

Attorney Sabater: February 23, 1938. We would like the answer to be read out to us, made to the question from my colleague in connection with the admissions of Mrs. Elvira Olivieri-Commins. What she told him when they were in Mayaguez.

Judge: Let the stenographer read the answer in question.

Stenographer [reading from his notes]:

"About the month of January 1937, subsequent to the death of Mr. Delgado, who was the candidate to the mayoralty of the city of Ponce, she had received a visit from Mrs. Pasarell-de-Delgado, who finding her sick, asked her what was the matter with her, and Mrs. Elvira Olivieri answered that she was worrying a lot on account of some obligation secured by her estates, and that was worrying heavily on her. Mrs. Pasarell-de-Delgado told her not to worry—

"Attorney Tormes: Just a moment—

"Attorney Ochoteco: It is all right. Please testify to what you know, of what Mrs. Pasarell said—

"Attorney Sabater: We object.

"Mr. Peralta: Mrs. Elvira Olivieri said that Mrs. Elena Pasarell-de-Delgado offered her money."

Attorney Sabater: Is this what you testified?

Mr. Peralta: Yes, sir.

X-Q. Now, do you remember having testified, having made the following statement in that ejectment proceeding: question from attorney Ochoteco, "Who were present?" "Those present there were attorney Porrata, Mr. Pastor Mandri, Mr. Ulises Petrilli, Mr. Sicardo, this young man here, a gentleman by the surname of Vazquez, from Ponce, whose name I cannot remember, the witnesses and myself." Question by attorney Ochoteco, "Does Mr. Peralta remember the conversation between you and her?"

You answered, "On the first or on the second occasion?" Attorney Ochoteco, "On the second one." Your answer was, "We reached there between two and three in the afternoon, more or less. The lady was by herself and attorney Porrata, in the performance of his notarial duties, handed to her a notarial act of demand. She started reading it herself, and to questions from attorney Porrata said that she was very sorry that she had not been able to make that deal with Mario Mercado e Hijos, etc." You went on testifying, "Mrs. Elvira Olivieri said that Mrs. Elena Pasarell was going to let her have the money on condition that she sold her the 'Indios' estate in order to help her boys, that is, the Lluberas-Pasarell brothers, and that she leased her the 'Juanita' estate." Do you remember having testified that?

Attorney Ochoteco: For the purpose of the record only, we object to the question, because when we attempted to go into that matter involved in this question, my colleague objected and we were prevented from going into that matter, that is, that the witness should speak of what Mrs. Elvira Olivieri had told him, and now it appears that my colleague wants to go into that matter that was barred to us.

Attorney Sabater: Question withdrawn.

Judge: If the question is withdrawn, no discussion is necessary.

Attorney Sabater: That is all.

Judge: Then, has the attorney finished the cross-examination?

Attorney Tormes: We have to cross-examine the witness ourselves.

Judge: Attorney Sabater has finished.

Attorney Tormes: Mr. Peralta, on December 15, 1936, did the firm Mario Mercado e Hijos hold a lease from Mrs. Elvira Olivieri on her property known as "Juanita" and "Indios"? *A.* On December 15, 1936, yes, sir.

X-Q. How much was she paid as rental? *A.* She was paid five thousand dollars for the whole of the "Indios" estate, and three thousand dollars for the whole of the "Juanita" estate.

Attorney Tormes: How much was her share in that rental?

Mr. Peralta: I presume that she received half of it.

Attorney Ochoteco: I move to strike out the presumption. Plaintiff should not prove its case lying on presumptions.

Attorney Tormes: I am cross-examining.

Attorney Ochoteco: I object to the witness testifying on presumptions.

A. They (the ladies) divided between themselves the amount received.

Attorney Tormes: Are you familiar with the accounting of Mario Mercado e Hijos? *A.* Yes, sir.

X-Q. At that time, when these rentals were paid to Mrs. Elvira Olivieri-Commins, under this lease, was there any contract between Mrs. Elvira Olivieri and Mario Mercado e Hijos? *A.* Yes, sir, with a debit balance as a rule. And today—

Attorney Tormes: I move to strike out the "today". *A.* The debit balance at that time.

Judge: At what time?

Mr. Peralta: December 15, 1936.

Attorney Tormes: Was it customary for Mrs. Elvira Olivieri to issue checks chargeable to her account against Mario Mercado e Hijos?

Attorney Ochoteco: We object. We have not put any question in that respect during the examination. We have not put any question regarding the lease to Mario Mercado e Hijos from Mrs. Elvira Olivieri-Commins. We have not put any question regarding such particular, and in the second place we fail to see any materiality regarding this examination concerning contracts between Mrs. Elvira Olivieri-Commins and Mario Mercado e Hijos, and balances on a certain date, or whether or not any payment was made.

[Attorney Ochoteco argues at length on his objection.]

Attorney Tormes: There is pending admission a letter alleged to be subscribed by Mrs. Elvira Olivieri-Commins, that has not been marked for exhibit and which bears upon a warrant of payment.

Judge: For such purpose the question is admitted.

Attorney Tormes: I am satisfied with the testimony on that particular. There are pending admission by the court these two exhibits, that is, a letter signed by Mrs. Elvira Olivieri-Commins and a letter signed by Mr. Rafael Barletta, and I have already examined him about that.

Attorney Ochoteco: Is that all?

Attorney Tormes: No. Tell me, on the occasion of the call on April 6, 1937, made by you and all those other people, at the home of Mrs. Elvira Olivieri-Commins, and that one Gilberto Sicardo-Barbosa, or Barbosa-Sicardo, was with you, did you warn Mrs. Elvira Olivieri-Commins that her testimony was going to be taken down by the stenographer?

Mr. Peralta: Yes, sir. The notary warned her.

X-Q. I have not asked you regarding the notary.

Attorney Ochoteco: The witness is going to explain his answer, and he has said, "Yes, sir. The notary."

Attorney Tormes: My question has nothing to do with the notary.

Judge: Please proceed.

Attorney Tormes: Tell me, it seems to me to have heard you say that you talked about selling, or buying or selling, on the part of Mrs. Elvira Olivieri, such property as late as March 4, 1937?

Mr. Peralta: I do not think I have said so. You got it wrongly.

X-Q. How long were you talking about your buying the "Juanita" and "Indios" estates? *A.* As regards the purchase, that is, of the "Cupey" parcel, the first conversations took place on January 4, 1937.

X-Q. When was this sale discussed? *A.* Mrs. Elvira Olivieri discussed the sale about February 12, 1937.

X-Q. Discussed what— *A.* The sale.

X-Q. Then the other conversations referred to the lease? *A.* Yes, sir.

X-Q. This is sufficient. Nothing further now with the witness.

Attorney Sabater: That is all.

Attorney Ochoteco: I am going to put you a question. Please tell me, when my colleague Tormes asked you whether Mrs. Elvira Olivieri-Commins had been warned as to the fact that her statements were going to be taken down by the stenographer, you said: "Yes, sir", something to this effect, "The notary warned her", and you were then interrupted by my colleague. What was it you were going to say?

Mr. Peralta: I was going to say again that when we called on this lady on April 6, 1937, the notary, Mr. Mandri and your witness went into the house and the notary delivered to her a copy of the demand.

Attorney Tormes: This has already been taken down. *A.* The notary asked her leave to call the stenographer to take down the notes.

Judge: You had already stated that.

Attorney Ochoteco: We submit in evidence a letter of December 15, 1936, from Mrs. Elvira Olivieri-Commins to Mario Mercado e Hijos.

Attorney Tormes: We object to that, to the admission of this letter of December 15, because the same is irrelevant and immaterial, and because it does not constitute an evidential element to be of any use in this trial.

Judge: Let me see the letter.

Attorney Ochoteco: As regards the last paragraph.

Judge: What is the objection?

Attorney Tormes: That such letter is irrelevant, immaterial and does not constitute an evidential element in any way.

Attorney Sabater: If it should appear from the text of the letter that Mrs. Elvira Olivieri-Commins is requesting the payment of a warrant from Mario Mercado e Hijos of a certain amount of money, such thing has nothing to do with the complaint filed in the present case; and as to the negotiations alleged to be carried by Mr. Barletta, concerning this particular it has been stated by the same witness Mr. Peralta that on some occasions Mr. Barletta used to go and make requests and was carrying certain private

negotiations with the firm Mario Mercado e Hijos, and this proves really nothing.

[Attorney Sabater argues on his objection.]

Judge: The other side?

Attorney Ochoteco: We submit it as a further evidence of the agency given by Mrs. Elvira Olivieri-Commins to Mr. Rafael Barletta, regarding the last paragraph. This is one of the grounds for introducing this letter, and on this sole ground the same is admissible.

Judge: The court admits it as circumstantial evidence, to be given any probatory value that it may have in connection with the evidence.

Attorney Tormes: We take exception on the stated grounds.

Judge: Let it be marked Exhibit R.

[The document submitted and admitted in evidence as Exhibit R of the Plaintiff is literally copied and is attached at the end of this transcript, as "Exhibit R of the Plaintiff".]

Attorney Sabater: We take exception.

Attorney Ochoteco: I submit in evidence a letter from Mr. Rafael Barletta to the firm Mario Mercado e Hijos, dated February 6, 1937.

Attorney Tormes: Our objection on the same grounds.

Attorney Sabater: Our objection too.

Attorney Tormes: On the grounds of being irrelevant and because it does not constitute an evidential element, from which the court may draw any inference.

Judge: For which purpose is it submitted?

Attorney Ochoteco: In connection with the testimony of Mr. Peralta regarding the call made on him by Mr. Barletta, in behalf of Mrs. Elvira Olivieri Commins, in connection with a wire admitted in evidence to this effect.

Judge: Admitted as circumstancial evidence, to be given any probatory value that it may have, and is marked Exhibit S.

Attorney Sabater: We take exception.

Attorney Tormes: We take exception.

[The document submitted and admitted in evidence as Exhibit S of the Plaintiff is literally transcribed and attached at the end of this transcript as "Exhibit S of the Plaintiff".]

Attorney Ochoteco: That is all with the witness.

Judge: Any further question?

Attorney Tormes: That is all with the witness.

Judge: You may withdraw.

TESTIMONY OF ATTORNEY PEDRO M. PORRATA.

Attorney Ochoteco: Your name, please.

Attorney Porrata: Pedro M. Porrata.

Q. Your profession? *A.* Attorney at law.

Q. Do you know Mrs. Elvira Olivieri Commins? *A.* Yes, sir. I had the honor to become acquainted with her for the first time in her home in the city of Mayaguez.

Q. At Mayaguez? *A.* Yes, sir.

Q. On what time? *A.* I think it was on April 6, 1937.

Q. Did you call on her alone or accompanied? *A.* On that day I was accompanied.

Q. By whom? *A.* Accompanied by Mr. Pastor Mandri, manager of the Rufina Central, belonging to Mario Mercado e Hijos, manager of Mario Mercado e Hijos; by Mr. Jose Ramon Peralta; by Mr. Ulises Petrilli; by Mr. Neri Vazquez, and by the stenographer, who at the time was my stenographer, Mr. Barbosa-Sicardo.

Attorney Ochoteco: What was your business with Mrs. Elvira Olivieri-Commins?

Mr. Porrata: On account of a notarial act drawn up by me, for the purpose of serving on that lady a demand, requesting her to make a certain assignment to the firm Mario Mercado e Hijos.

Q. As a result of the service of a demand?

Judge: There is a paper submitted in evidence. Make reference to the paper in order to save time.

A. I went to serve a demand, and the notarial act of demand speaks for itself.

Attorney Ochoteco: Will the witness be kind enough to testify as to what took place when you arrived at the house of Mrs. Elvira Olivieri-Commins, as far as she was concerned? *A.* We reached the house of Mrs. Elvira Olivieri-Commins and there I was introduced to her by Mr. Pastor Mandri.

Q. Did you carry with you any sum of money? *A.* I had with me $46,000.

Judge: I beg your pardon—

Mr. Porrata: I was introduced to her and she begged us to come in. She sat down in front of me, and Messrs. Peralta and Mandri on a canape by our side. I then told her the purpose of our trip, of my call, and she immediately started explaining to me about Mr. Mario Mercado, that she had a great regard for the Mercado family—

Attorney Ochoteco: Do you remember her statements made to you? *A.* Yes, sir.

Q. Please— *A.* In connection—

Attorney Tormes: We object on the same grounds of our objection to the testimony of the witness Jose (R. Peralta).

Attorney Sabater: We also object and reproduce the same objection as before.

Judge: The court admits the testimony.

Attorney Tormes: We take exception.

Attorney Sabater: We take exception.

A. After listening to her for a few moments, I said to her: "Madam, would you be so kind as to allow me to bring two witnesses and a stenographer which I have with me", and she said: "Of course, I shall be very pleased." Then I told her: "The stenographer, madam, is going to take stenographic notes of any statements made by you in connection with this demand." Then, in answer to my questions, she said that Mrs. Pasarell, a widow, mother of Mr. Francisco Lluberas, Elena Pasarell, widow of Lluberas, had been in Mayaguez; that Mrs. Lluberas had offered to buy from her the "Indios" estate for $40,000, and that she

had made that offer on condition to lease also the "Juanita" estate.

Attorney Tormes: We object on the same grounds because he is stating what Mrs. Elena Pasarell had stated.

Judge: Let the statements made by Mrs. Elena Pasarell be stricken out.

Mr. Porrata: That was the answer she gave me. She told me that she had offered to buy the "Indios" estate from her.

Attorney Ochoteco: Do not repeat what Mrs. Elvira Olivieri said that Mrs. Elena Pasarell had stated to her. You may state what Mrs. Elvira Olivieri told you and why she had acted that way.

Mr. Porrata: She told me that she had offered to buy from her the "Indios" estate for $40,000.

Attorney Ochoteco: Did she mention anybody? *A.* Yes, sir.

Q. Whom did she mention? *A.* Mrs. Elena Pasarell, widow of Lluberas.

Q. This lady called Elena, if I am not mistaken, is Mrs. Elena Pasarell-de-Delgado? *A.* Yes, sir.

Q. Is she the same? *A.* Yes, sir. She was the wife of Mr. Delgado, who was a candidate to the mayoralty of Ponce. I will better identify her as the mother of Mr. Francisco Lluberas. At that time, she had promised both to lease the "Juanita" estate and to sell the "Indios" estate.

Q. The estate "Indios", to whom? *A.* To Messrs. Lluberas-Pasarell.

Q. And the "Juanita" estate? *A.* To Emilio Blasini. I then, reading from the deed, told her, "Mrs. Elvira Olivieri, there is a clause whereby you bound yourself to notify Mario Mercado e Hijos regarding such deal." She then said to me, "I promised to keep the offer as a secret, and I am a woman who keep my word, and I would prejudice those people if I mentioned names".

Attorney Ochoteco: Which people?

Mr. Porrata: Lluberas-Pasarell, who according to her had made the offer. Then, while she was answering my questions, her son

came up. I was doing my duty as a notary, the mission with which I had been charged, and I told her so, and whether she needed anybody to assist her, and she told me that that was not necessary, that she had sold the estate, she had executed the deed and that she was not worried. Then I myself advised her, and her son went to the District Court of Mayaguez to fetch attorney Sabater. I then explained to attorney Sabater—

Q. All right. Then, what happened? *A.* I would like to explain—

Q. Anything you may say is not admissible.

Judge: You are not now an attorney. You are now a witness.

A. Then attorney Sabater came and he requested that any answer coming from Mrs. Elvira Olivieri should be agreed upon between him and myself.

Attorney Tormes: I move to strike out what is stated regarding such agreement.

Judge: Motion granted.

Mr. Porrata: That the answer should be the one contained in the record, and yet I told Mr. Sicardo, the stenographer—

Attorney Tormes: Just a moment—

A. To transcribe the stenographic notes—

Attorney Ochoteco: Who dictated the return of the service which appears in the notarial act? *A.* It was dictated by attorney Sabater.

Q. In reference to what— *A.* I want to explain that. When attorney Sabater arrived, I willingly consented to take the answer that the attorney might suggest.

Attorney Tormes: We move to strike out all this on account of being self-serving evidence.

Judge: To strike out what?.

Attorney Tormes: Anything that might have been done by attorney Sabater.

Judge: The court understands that the return of the notarial act, that is, the answer, was dictated by attorney Sabater, and here it is. Everything else is stricken out.

Attorney Ochoteco: Tell me, colleague, when you were acting as a notary in the service of the notarial act upon Mrs. Elvira Olivieri Commins, you said that one of her children came up?

Mr. Porrata: Yes, sir. From my information, she had two sons, a physician and a dental surgeon.

Q. To whom of the two have you referred? *A.* To the dental surgeon, this gentleman here.

Judge: Will you tell me his name? *A.* Domingo Blasini Olivieri.

Attorney Ochoteco: That is all.

Judge: Cross-examination?

Attorney Tormes: I move to strike out the whole testimony as irrelevant, immaterial and impertinent and because the same does not constitute any evidential element to throw light on this matter.

Attorney Sabater: The same objection.

Attorney Ochoteco: We simply object.

Judge: The court simply denies it.

Attorney Tormes: We take exception.

Judge: Please proceed.

Attorney Ochoteco: We move for a two-minute recess.

Judge: Then the court takes a short recess.

[Recess of the court.]

TESTIMONY OF MR. MARIO MERCADO-RIERA.

Attorney Ochoteco: Your name.

Mr. Mercado: Mario Mercado-Riera.

Attorney Ochoteco: Are you connected in any way with the firm Mario Mercado e Hijos?

Mr. Mercado: Yes, sir.

Q. What is your position in that firm? *A.* Managing director of it.

Q. Do you know Mrs. Elvira Olivieri-Commins? *A.* Yes, sir, I have known her for many years.

Q. By reason of what? *A.* Commercial and social relations.

Q. Are you acquainted with the contract of mortgage and

option to purchase and lease entered into between Mrs. Elvira Olivieri-Commins and the firm Mario Mercado e Hijos? *A.* Yes, sir.

Q. Do you know whether at any time prior, coincident with or subsequent to March 9, 1937, the firm Mario Mercado e Hijos was notified by registered mail or otherwise, by Mrs. Elvira Olivieri-Commins or by Mr. Rafael Barletta, or by anybody else, that said lady had received offers to purchase or lease the estates "Indios" and "Juanita", in connection with a third party?

Attorney Tormes: We object. Mrs. Elvira Olivieri was not bound to do so, simply because at the time referred to in that question Mario Mercado e Hijos did not hold any right by virtue of such option to purchase and lease, to which my colleague is referring in his question, simply because Mario Mercado e Hijos had disposed of the mortgage credit containing such clause of option to purchase and lease in favor of Mrs. Belen Gonzalez, widow of Tous Soto, without any reservation.

Attorney Sabater: We object on the same grounds, and because once Mario Mercado e Hijos assigned the mortgage credit to the widow of Tous Soto, said Mario Mercado e Hijos ceased to have any contractual relation with defendant Mrs. Elvira Olivieri-Commins. On this ground.

Judge: This is the same question that had come up previously.

Attorney Ochoteco: We submit it.

Judge: The court admits the question.

Attorney Tormes: We take exception.

Judge: What was the date, March 9 of which year?

Attorney Ochoteco: Nineteen hundred thirty-seven.

Mr. Mercado: The firm Mario Mercado e Hijos never received any notice, by either registered mail or in any other way, from Mrs. Elvira Olivieri Commins, advising us that she had received offers to purchase her property, or proposals to lease the same.

Q. And from Mr. Rafael Barletta? *A.* Neither.

Q. When did you happen, as managing director of the firm, to

be informed that Mrs. Elvira Olivieri-Commins had disposed by sale or by lease of the estates "Indios" and "Juanita"?

Attorney Tormes: That is immaterial and does not constitute any evidential element. We object.

Attorney Sabater: We object on the same grounds.

Judge: Question admitted.

Attorney Tormes: We take exception.

A. I was advised by the manager of the firm, Mr. Jose Ramon Peralta:

Attorney Ochoteco: What did you do on being advised by Mr. Peralta?

Mr. Mercado: I immediately directed him to go to Yauco and see attorney Lopez-de-Victoria, before whom, he had already told me, the deed had been executed.

Attorney Ochoteco: When did you receive that information from Mr. Peralta? Did you instruct Mr. Peralta to call at the office of attorney Lopez-de-Victoria, in Yauco? *A.* In Yauco.

Q. More or less, when was that? *A.* More or less, about the tenth or the eleventh.

Q. Of which month? *A.* March.

Q. Of which year? *A.* Nineteen hundred thirty-seven.

Q. Did you go together with Mr. Peralta? *A.* No, sir. Mr. Peralta left Guayanilla in his car straight for Yauco, and I left accompanied by attorney Pedro M. Porrata, who is present here. We called at the office of attorney Lopez-de-Victoria, who is present here.

Q. Who called there? *A.* Mr. Peralta, attorney Porrata and myself met there. We talked with attorney Luis Lopez-de-Victoria, and I remember having requested him to show us the deed, in order to ascertain the terms of the sale and lease entered into regarding the estates "Indios" and "Juantia", and attorney Lopez-de-Victoria refused to show us the deed on the ground that such papers were not public documents, that they were quasi-public (I think that was the word used by him) and that only the parties

in interest could read it. Attorney Lopez-de-Victoria told us that we had—

Attorney Tormes: Do not say what he told you.

Mr. Mercado: Will you let me explain?

Attorney Ochoteco: It is not admissible.

Judge: There are things that cannot be mentioned under the Law of Evidence, even though conversations may have taken place.

Attorney Ochoteco: Prior to the disposal by Mrs. Elvira Olivieri by sale or lease of said "Indios" and "Juanita" estates, did you know whether Mario Mercado e Hijos was in negotiations with said lady for the purchase or lease of such estates? *A.* Yes, sir.

Q. Were you in negotiations?

Mr. Mercado: We were in negotiations with Mr. Barletta, who had been authorized by Mrs. Elvira Olivieri-Commins to that effect.

Attorney Ochoteco: More or less, when did such negotiations begin? *A.* These conversations started between January first and January 6, 1937.

Q. How many years did they last? *A.* These negotiations were terminated when we went to the office of attorney Lopez-de-Victoria to defend our right of option and I told him—

Attorney Tormes: I move to strike out that reference to having an option.

Judge: That is his point of view. Whether or not he had it, will be determined by the court.

Attorney Tormes: It is in order to be consistent with the objection.

Judge: Motion denied.

Attorney Tormes: We take exception.

Attorney Sabater: We make the same objection and take the same exception.

Judge: You may proceed with your testimony.

Attorney Ochoteco: Just a minute. Did Mrs. Elvira Olivieri-

Commins make you definite proposals as to the sale and lease of these parcels?

Mr. Mercado: No, sir. Never.

Q. Did you make any to her? And when I say you, I have in mind the firm. *A.* Yes, sir.

Q. Testify in regard to these particulars. Do you need any memorandum for that purpose? *A.* Perhaps it would be better if I looked at the memorandum.

Attorney Tormes: We are going to fill the record with irrelevant matter, because Mr. Peralta testified in regard to all these questions. This is a repetition of the same thing. We are thereby wasting time.

Attorney Ochoteco: We might save time if my colleague accepts, with the proper objection the testimony of Mr. Mercado in the ejectment proceeding, and in this way we would save time.

Attorney Tormes: I can give you an answer within two minutes.

Attorney Ochoteco: With a further question we might close.

Attorney Tormes: There are things to which we must object.

Judge: Then he shall testify. Now he asks to be allowed to refresh his memory looking at certain papers.

Attorney Ochoteco: Who prepared that memorandum which you need to refresh your memory?

Mr. Mercado: We prepared it. I prepared mine.

Q. Yours? *A.* As I am not a typist, I used my secretary in its preparation.

Q. Was it you who made it? *A.* Yes, sir; I made a draft and I then dictated it.

Q. Please refresh your memory with your memorandum and answer my question. *A.* About January 4, 1937, there was a meeting in the office of the Central Rufina, attended by the manager Mr. Jose Ramon Peralta, Mr. Rafael Barletta, son-in-law of Mrs. Elvira Olivieri-Commins, and myself. Mr. Barletta requested from us or told us that Mrs. Elvira Olivieri-Commins had come to a decision, and that she wanted us to make a proposal to her through him. I told Mr. Barletta that we were not obliged

to make any proposals to her; that we were not obliged to make proposals to Mrs. Elvira Olivieri, in view of the fact that we had an option to purchase and lease on the same terms, and that it was up to Mrs. Elvira Olivieri to ask a price for her property.

Attorney Tormes: With the leave of the court. Please notice that at the time of that conversations with Mr. Rafael Barletta, the latter was an agent with limited powers from Mrs. Elvira Olivieri, and that all such conversations were subject to ratification and confirmation from her, as testified to by Mrs. Elvira Olivieri herself. On this score, we object, and pray for the elimination of such statement.

Judge: This question has already been raised when Peralta was testifying.

Attorney Tormes: Nobody had established the premise that they had an option. Peralta never went so far.

Judge: That is the only variation.

Attorney Tormes: It is a variation to our prejudice.

Judge: The court had stated that this is a point of view of the witness. It is not the witness who is going to decide this case; it is the court which is going to decide it. The witness might say that a certain thing is so, and the court may decide otherwise. So the court admits the testimony from the witness.

Attorney Tormes: We take exception.

Attorney Sabater: We object and take exception on the same grounds.

Judge: This question has been raised on several occasions and has been discussed at length in the course of this trial, and the court has already made up its mind regarding the admission of such evidence, and decides the testimony of the witness to be given any value that may be attached to it together with the rest of the evidence.

Attorney Sabater: We respectfully take exception.

Judge: Order reproduced.

Attorney Tormes: Let it be understood that on all occasions where testimony is given in this respect, we will object.

Judge: Please proceed.

Mr. Mercado: Notwithstanding such statements, we consented as a matter of courtesy to make a proposal to Mrs. Elvira Olivieri, reserving always our priority right, bearing in mind the competition from powerful competitors such as Guanica Central, and others. We made the proposal so as to open conversations with Mrs. Elvira Olivieri.

Attorney Ochoteco: And what kind of negotiations were these? *A.* Negotiations for purchasing.

Q. When was that, if you remember? *A.* About January 4, 1937.

Judge: For purchasing what? *A.* The estates of Mrs. Elvira Olivieri-Commins.

Attorney Ochoteco: Are you referring to "Indios" and "Juanita" estates? *A.* The "Indios" estate was first mentioned, but Mr. Barletta afterwards pointed out that the "Juanita" estate was also involved, all the lands.

Q. After the meeting of January 4, was there any other meeting?

Mr. Mercado: Yes, sir, at which I was present—

Attorney Ochoteco: Please mention all the meetings, according to their date, in which you were present. *A.* I was present at three meetings. One on January 4, in Guayanilla, that is the one I have just referred to; another on February 12, also in Guayanilla, in the office of Central Rufina, accompanied by the manager Mr. Peralta, and by Mr. Barletta; another with Mr. Barletta in my office in Ponce, about February 19, 1937. In the second meeting with Mr. Barletta, in Guayanilla, he told us that Mrs. Elvira Olivieri had decided to sell her estates and that she wanted to entertain offers of lease, and asked for proposals.

Attorney Ochoteco: And at the other meetings? *A.* At the last meeting in Ponce he called on me.

Q. In what place? *A.* In my office in Ponce, Luna Street. Mr. Barletta called on me and advised me that he had an engagement with Mr. Peralta, but that he was absent from the office on ac-

count of illness, and that he desired to exchange views with me. He submitted two proposals to me: one—and I do not know whether this is a personal matter—

Attorney Ochoteco: Do not mention it.

Mr. Mercado: He asked me to lend him—

Q. Please do not mention the personal matter. *A.* He stated that Mrs. Elvira Olivieri-Commins had made up her mind and that she was going to submit to us a final proposal in writing by registered mail.

Q. When was that? *A.* On February 19, 1937.

Q. Was this proposal which Mr. Barletta mentioned to you ever received by you or by the firm? *A.* No, sir.

Q. Verbally or in writing? *A.* No, sir.

Q. Was it mailed to you? *A.* No, sir.

Q. Please proceed with your testimony. *A.* After that, we went on talking. Small talk; then he got up, said goodby and went away.

Q. Was that the last time you met? *A.* That was the last time I had the pleasure of the visit of Mr. Barletta.

Attorney Ochoteco: Did you meet Mrs. Elvira Olivieri-Commins personally?

Mr. Mercado: Never. I never had the honor to call on her.

Q. Do you know— Do my colleagues acknowledge the qualifications of the witness as regards land and its value?

Attorney Tormes: He owns a lot of land.

Attorney Ochoteco: Is the witness personally acquainted with the estates "Juanita" and "Indios"? *A.* Yes, sir. I am personally acquainted with them.

Q. The portion belonging to Mrs. Elvira Olivieri-Commins? *A.* In what estate?

Q. Regarding "Indios". *A.* Yes, sir.

Q. And the "Juanita" estate? *A.* Yes, sir. I am personally acquainted with the parcel adjudicated to Mrs. Elvira Olivieri-Commins from the "Indios" estate, and the whole of the "Juanita" estate.

Attorney Ochoteco: When you say "Indios", do you refer to the portion sold by Mrs. Elvira Olivieri-Commins to Messrs. Lluberas?

Mr. Mercado: Yes, sir. I refer to the parcel known as "Cupey", and the one known as "El Uno Bomba".

Judge: What? *A.* The parcel adjudicated to her was the "Cupey" tract, with an area of 41 cuerdas, and part of the parcel "Bomba", of 4 cuerdas; totalling 45 cuerdas.

Attorney Ochoteco: Which of the two estates is more valuable, the "Indios" or "Cupey" tract, or the "Juanita" tract? *A.* "Juanita" is worth twice as much as the portion called "Cupey" in the "Indios" estate.

Q. On what do you rely for such a statement? *A.* The land of the "Cupey" parcel is very good land, but has half as much in cane land as the "Juanita" estate whose alluvial soil is better than the land of the "Cupey" parcel. The "Juanita" estate has 81 cuerdas planted to cane, and the "Cupey" parcel has 45.

Attorney Ochoteco: Forty-five?

Mr. Mercado: Yes, sir.

Q. Please tell me, subsequent to the assignment of the four mortgage promissory notes by the firm Mario Mercado e Hijos to the heirs of Mr. Jose Tous-Soto, what further intervention did you have, or share, or what steps did the firm of Mario Mercado e Hijos take in connection with such mortgage credits?

Attorney Tormes: We object on the following ground: because the answer to such a question would tend to change the terms of a written agreement; the agreement entered into between this people and the Tous-Soto people, for which contract there was an authorization from this court, because there were incapacitated minors involved in this deal, and this court was never advised of any reservation in favor of Mario Mercado e Hijos, when disposing of such mortgage promissory notes and of the mortgage securing such promissory notes. Because it is presumed that all the stipulations between the parties were set down in that written instrument, and they are now estopped, Mario Mercado e Hijos,

from alleging anything in regard to such deal. Because no fraud in that deal has been alleged, nor any defect, and based on said points of view we object to the admission of such evidence. This is the proper objection for the present, and we further object on the ground that any reservation that might have been made, as real property is involved, is a right recordable in the Registry of Property, and if there had been any reservation in favor of Mario Mercado e Hijos, and the same had been recorded in the Registry of Property in connection with this estate, the same cannot prejudice either Lluberas or Blasini.

Attorney Sabater: The same objection.

Attorney Ochoteco: It is not the question here of altering the terms of any contract. We are specifically referring to the assignment of the mortgage promissory notes made by Mario Mercado e Hijos to the widow of Tous-Soto. When the court shall have an opportunity to study the case, and now it can do so, the court will have an opportunity to examine the deed of assignment of the mortgage credit, of the four mortgage promissory notes, executed by the partnership Mario Mercado e Hijos to the widow of Tous-Soto.

[Attorney Ochoteco argues thereon and cites 47 P.R.R. 522.]

[Attorney Tormes argues on his objection at length.]

Judge: This point has already been discussed at length. The court decides that he may testify.

Attorney Tormes: We take exception.

Attorney Sabater: We take exception.

Judge: Please proceed.

Attorney Ochoteco: Let the stenographer repeat the question.

Stenographer [reading from his notes]:

"*Q.* Please tell me, subsequent to the assignment of the four mortgage promissory notes by the firm Mario Mercado e Hijos to the Heirs of Mr. Jose Tous-Soto, what further intervention did you have, or share, or what steps did the

firm of Mario Mercado e Hijos take in connection with such mortgage credits?"

Mr. Mercado: The firm Mario Mercado e Hijos went on performing all the undertakings of the deed.

Attorney Ochoteco: Are you referring to the deed of assignment to the widow of Tous-Soto?

Mr. Mercado: Yes, sir.

Attorney Tormes: Let the fact be stated that the witness is reading from some papers before him. *A.* These are some memoranda which I have before me.

Attorney Ochoteco: Any objection?

Judge: He may testify in general terms.

A. To pay the interest to the widow monthly.

Attorney Ochoteco: Did Mario Mercado e Hijos pay punctually the interest to the widow and the heirs of Mr. Jose Tous-Soto? *A.* Yes, sir. We used to pay the interest monthly, whereas Mrs. Elvira Olivieri credited the same to use semiannually.

Q. And how did you such interest to the heirs of Tous-Soto? *A.* Monthly, so as to make it easy for the widow to get her income.

Q. That is all.

Attorney Tormes: We will move to strike out the testimony, and in order to be consistent with our objection—

Attorney Ochoteco: Will you allow me a question?

Attorney Tormes: As irrelevant. We move to strike out all the particulars stated by the witness in regard to the reservation.

Attorney Sabater: We also move to strike that out.

Attorney Ochoteco: We object.

Judge: Motion to strike overruled.

Attorney Tormes: We respectfully take exception.

Attorney Sabater: We take exception.

Attorney Ochoteco: One question. [To the witness.] Please tell me, did ever the partnership Mario Mercado e Hijos assign to the heirs of Mr. Jose Tous-Soto the option to lease and purchase mentioned by you in your testimony, granted by Mrs. Elvira

Olivieri-Commins to the firm of Mario Mercado e Hijos in connection with the estates "Indios" and "Juanita"?

Attorney Tormes: We strongly object because the same is a leading question.

Judge: There is a deed of assignment of credits, and the deed will speak for itself. Objection sustained.

Attorney Ochoteco: All right, that is all with the witness.

Judge: Is the witness going to be cross-examined at length?

Attorney Tormes: Has my colleague finished with the witness?

Attorney Ochoteco: That is all for the present.

Judge: Then the court adjourns to this afternoon for the cross-examination. The court adjourns to 2 P.M.

[Recess of the court.]

Judge: The session of the court is resumed. Let us proceed with the case. Mario Mercado-Riera was on the stand. The cross-examination of the witness was about to begin.

Attorney Tormes: We are not going to cross-examine in behalf of the defendants. We put no questions to Mr. Mario Mercado. We confine ourselves solely to the motion to strike out and we rest thereon.

Judge: That has been disposed of. Go to your seat.

Attorney Subater: We will not cross-examine.

Attorney Ochoteco: Let us gain time by examining attorney Zapater in Blasini's absence.

TESTIMONY OF ATTORNEY FERNANDO ZAPATER-MARTINEZ.

Attorney Ochoteco: Your name.

Mr. Zapater: Fernando Zapater-Martinez.

Q. Profession? *A.* Attorney at law.

Q. Do you know Mr. Jose R. Peralta? *A.* Yes, sir.

Q. Do you know Mr. Rafael Barletta? *A.* Yes, sir. I know him.

Attorney Ochoteco: Do you remember about March 8, 1937, having seen Mr. Peralta and Mr. Barletta together?

Mr. Zapater: Yes, sir.

Q. Where? *A.* In my office, in the house of Dr. Salazar, corner of Isabel and Mayor Streets, in Ponce.

Q. Did you overhear any conversation between them? Between Mr. Barletta and Mr. Peralta? *A.* They called there—.

Q. I mean whether you overheard any conversation between Mr. Barletta and Mr. Peralta. *A.* Yes, sir.

Q. What did they talk about? *A.* Mr. Peralta addressed himself to Mr. Lluberas, to Mr. Barletta—

Judge: Then you mean Barletta, instead of Lluberas? *A.* Yes, sir.

Judge: I want to make this clear for the purpose of the record. *A.* Mr. Peralta asked Mr. Barletta where the matter stood, and he said to him that he would call on the office of Mr. Peralta to have an exchange of views.

Attorney Ochoteco: Did you overhear any other statement from Mr. Peralta?

Attorney Tormes: We object, as being too generic.

Attorney Ochoteco: We withdraw the question.

Mr. Zapater: He said that the business was progressing all right.

Attorney Tormes: The question has been withdrawn.

Attorney Ochoteco: Please mention all that you overheard at that moment between Barletta and Peralta.

Attorney Tormes: In connection with what?

Attorney Ochoteco: In connection with the conversation to which the witness has been referring.

Attorney Tormes: It has been stated here that he told him that he would call at his office, and it seems to me that he did not go further.

Attorney Ochoteco: The question has been taken down. Let the stenographer read the question. Stenographer [reading from his notes]:

"Did you overhear any other statement from Mr. Peralta?"

Attorney Tormes: A limited power is involved here and may be

that he will talk of things that have nothing to do with the present case; things quite unnecessary.

Judge: The witness is an attorney and he ought to know the matter to which he must confine himself and testify in regard to what he may consider pertinent.

Mr. Zapater: I cannot state precisely the words. This happened long ago. It seems to me that it was two years ago, and I do not remember the exact words.

Attorney Ochoteco: The ideas. *A.* I remember that Mr. Peralta said to him something about some pending business in connection with certain estates in Guayanilla, belonging to Mrs. Elvira Olivieri-Commins, and that Mr. Barletta told him that the matter was progressing all right; that he would later on call at the office of Mr. Peralta, and they went on talking regarding that matter.

Q. That is all.

Judge: Anything further?

Attorney Ochoteco: That is all.

Judge: The other party?

Attorney Tormes: Mr. Zapater, please tell me. On that March 8, 1937, you said that Mr. Lluberas had been in your office?

Mr. Zapater: Yes, sir.

X-Q. Was the mortgage for $40,000 owed by Mrs. Elvira Olivieri-Commins to the widow of Tous-Soto, cancelled on that same day? *A.* Yes, sir.

X-Q. For how long before had you been taking part in the proceedings for the cancellation? *A.* If I am allowed to look at my memorandum that I have here; some notes from my desk.

X-Q. For how long before had you been engaged in the cancellation? *A.* If I am allowed to look at my notebook, I can specify the dates. [The witness examines a notebook in his hands.] On March 3, 1937, there called at my office mister—

Judge: Examine your notes to refresh your memory and answer the questions.

Mr. Zapater: Yes, this happened on the eighth; five days before.

Judge: Specify the date of the cancellation of the mortgage, and how long you had been working. *A.* For five days before.

Q. And when did that conversation take place? *A.* The conversation between Mr. Barletta and Mr. Peralta, on the eighth; and the time when I commenced to do something in connection with this matter, was March 3, that is, five days before.

Attorney Tormes: In connection with that something that you were going to do? *A.* Mr. Lluberas called with Mr. Barletta, to give me instructions to proceed with the judicial steps necessary for the cancellation—

Attorney Ochoteco: We object to the question and the answer, because we have not asked him about Mr. Lluberas. We have only asked him about Mr. Barletta, and we fail to see that that is pertinent because they are going into a matter not covered by the direct examination.

Judge: Whom do you refer, Mr. Barletta or Mr. Lluberas?

Attorney Tormes: In his testimony he said that Mr. Lluberas had been there.

Judge: Was Mr. Lluberas there? Had he been there?

Mr. Zapater: He called on the third and later on on the eighth.

Q. Was he there the day of the meeting? *A.* Yes, sir, but he had gone downstairs from the office.

Attorney Tormes: Now you will see the connection with the presence of Mr. Lluberas in the office of Mr. Zapater on the eighth. The court must know that.

Attorney Ochoteco: We have confined ourselves to the examination of Mr. Barletta.

Atorney Tormes: The witness has stated that the other had been there.

Attorney Ochoteco: We have confined ourselves exclusively to the examination of the witness as regards Mr. Barletta, and the witness says that Mr. Barletta had a conversation with Mr. Peralta, and that such conversation took place or commenced

when Mr. Lluberas had gone downstairs to take his car, or something like that. Now I ask: what is the relevancy of a cross-examination in connection with the reason that drove Mr. Lluberas to the office of Mr. Zapater, inasmuch as no question has been put in the direct examination in connection with Mr. Lluberas? If my colleague wants such evidence, he can call the witness to the stand for the defendants at the proper time.

Attorney Tormes [To the court]: Please notice—

Judge: The court thinks it is admissible, inasmuch as the interview between Barletta and Peralta took place when Mr. Lluberas was going downstairs. Question admitted.

Attorney Ochoteco: We take exception.

Judge: Let the stenographer repeat the question.

Stenographer [reading from his notes]:

"Specify the date of the cancellation of the mortgage, and how long you had been working. *A.* For five days before.

"*Q.* And when did that conversation take place? *A.* The conversation between Mr. Barletta and Mr. Peralta, on the eighth; and the time when I commenced to do something in connection with this matter, was March 3, that is, five days before.

"Attorney Tormes: In connection with that something that you were going to do."

Judge: You may answer the question.

Mr. Zapater: When cancelling the mortgage credit constituted in favor of Mario Mercado e Hijos.

Judge: When was it that he called to give you instructions? Who gave you the instructions? *A.* Mr. Barletta and Mr. Lluberas.

Q. Both? *A.* Yes, sir.

Attorney Tormes: On that March 8, 1937, were you the attorney— *A.* Yes, sir.

X-Q. Retained by Mario Mercado e Hijos? *A.* Yes, sir.

X-Q. Were you the attorney of Mrs. Belen Gonzalez, widow of

Tous-Soto? *A.* Yes, sir. She was the owner of this mortgage credit.

X-Q. What is this document I show you? *A.* A verified copy of a deed.

Attorney Tormes: Regarding what?

Mr. Zapater: Cancellation of mortgage.

Judge: Was it already submitted in evidence?

Attorney Tormes: It is an exhibit of the plaintiff; the cancellation. A deed executed before attorney Zapater. Number 17 of March 8, 1937.

Clerk: Exhibit I of the plaintiff.

Attorney Tormes: Did you draw up that deed? *A.* Yes, sir.

X-Q. And you, under your signature, state on page—

Attorney Ochoteco: I object. The witness is not testifying as an attorney, but as a witness, and anything appearing from the instrument can be weighed by the court: whether it was an assignment of a mortgage credit or of an option, or of promissory notes, but it cannot be expected that the witness, juridically speaking, should ascertain for the court whether the subject matter of the assignment was a mortgage or a promissory note. The exhibit speaks for itself.

Attorney Tormes: It is what attorney Zapater, in his capacity as notary, set down on this deed.

Judge: He can testify as to facts.

Attorney Tormes: Whether he knows it and set down on this deed that Mrs. Belen was the owner— Let us save time. Attorney Zapater, as far as I am concerned, is excused as a witness.

Attorney Ochoteco: Do not you want to put further questions to him?

Attorney Tormes: No; I realize what an embarrassing situation is.

Judge: There is not a jury present here.

Attorney Ochoteco: At this time, and for the purpose of the record, we should like to have witness Mr. Rafael Barletta summoned (we have been taking steps for several days to locate him),

and that the marshal advise the court whether or not he has appeared.

Judge: Let the marshal call aloud the witness in the corridor; Mr. Rafael Barletta.

Attorney Tormes: There is an order of the court directing that this witness be summoned.

Judge: Perhaps he may have been here, and that is why I have ordered to have him called out.

Marshal: I have called but there has been no answer.

Judge: What does the plaintiff want now? The marshal says that Mr. Barletta does not answer. He is not within the precincts of the court.

Marshal: I do not know him personally; I have called him but no answer.

Attorney Ochoteco: We want this to be recorded, for the purpose of the record.

Judge: Has he been called in the same way as the other witnesses, and has he not answered?

Marshal: No, sir.

Attorney Ochoteco: We want to know whether every step has been taken by the marshal of this court in order to summon Mr. Barletta as a witness.

Judge: He has been called several times.

Clerk: Here is the summons addressed to Mr. Rafael Barletta, domiciled in Mayaguez, dated November 7, 1939. This summons was returned and the following appears on its back: "Every conceivable step has been taken to locate Mr. Rafael Barletta in order to serve on him the above summons, but our efforts have been of no avail, and I have been told by his people that he is out on the Island. (Signed) R. Forestier, Deputy Marshal."

Judge: Is that the return from the Marshal of Mayaguez?

Marshal: Yes, sir.

Judge: Did you receive that?

Marshal: Yes, sir. By mail.

Judge: When did you receive that?

Marshal: Monday afternoon.

Judge: Monday afternoon?

Marshal: Yes, sir.

Judge: What further information does the plaintiff desire?

Attorney Ochoteco: We wanted only to have the statement of the marshal recorded.

Judge: Some other evidence?

Attorney Ochoteco: Mr. Blasini.

TESTIMONY OF MR. EMILIO NOEL BLASINI-TOTTI.

Attorney Ochoteco: Your name?

Mr. Blasini: Emilio Noel Blasini-Totti.

Q. Are you one of the defendants in the present case? *A.* I think so.

Q. What do you mean? *A.* I am represented by an attorney in this court and I think I am one of the defendants.

Q. Do you know Mrs. Elvira Olivieri-Commins? *A.* Yes, sir.

Q. How long have you known her? *A.* She has known me longer than I have known her.

Attorney Ochoteco: I am interested in your knowledge of her.

Mr. Blasini: As long as I remember; she is my aunt.

Judge: What is your age? *A.* Thirty-three years, and some months, I think.

Attorney Ochoteco: Do you remember her as far back when you were about five years old? *A.* Ever since I reached the age of discretion; that depends.

Q. Do you know the estate "Juanita"? *A.* Yes, sir.

Q. Have you entered into any agreement with Mrs. Elvira Olivieri-Commins, in connection with the "Juanita" estate? *A.* I entered into a contract of lease, as shown by a deed that was submitted in evidence.

Q. This contract of lease entered into between you and Mrs. Elvira Olivieri-Commins, when was it executed?

Attorney Tormes: The best evidence is the contract, and if my colleague does not have a copy of it, I will let him have mine.

Attorney Ochoteco: No, my colleague, I thank you.

Attorney Tormes: We object; if the contract is in writing, that is the best evidence.

Attorney Ochoteco: One thing is the content of the contract and another thing is the date. I am asking him to let us know the date.

Judge: The question admitted, if he knows it.

Attorney Ochoteco: When was it?

Mr. Blasini: As I do not have any memoranda just now; the deed bears the date of its execution.

Q. You may refresh your memory by the deed, which is before you. Will the witness refresh his memory? *A.* It was in March, 1937, if I am not mistaken.

Attorney Tormes: I place the deed at the disposal of my colleague.

Attorney Ochoteco: Have you in your possession, or your attorney in his possession, any paper that might refresh your memory as to the date of the execution of the contract?

Mr. Blasini: The copy.

Mr. Ochoteco: Please examine it.

Attorney Tormes: I let my colleague to [*sic*] have it; deed number 41, of March 9, 1937.

Attorney Ochoteco: I ask the witness, and I am much obliged to you for your willingness. *A.* March 9, 1937.

Judge: March 9, 1937? *A.* Yes, sir.

Judge: Please proceed.

Attorney Ochoteco: Can the witness tell us the time when he discussed with Mrs. Elvira Olivieri-Commins that contract of lease? *A.* I discussed the terms of such contract of lease the night before the execution of the deed.

Q. The night before the execution of the deed? *A.* Yes, sir, that is, March 8, 1937.

Q. March 8, 1937?

Mr. Blasini: Yes, sir.

Attorney Ochoteco: Was that the first time that you discussed the contract of lease with her? *A.* Yes, sir.

Q. Prior to that time, had you discussed any contract of lease with her? *A.* No, sir.

Q. Never? *A.* No, sir.

Q. Nor had she suggested to you to lease the estate to you? Pay attention to the question. *A.* No.

Q. Not what? *A.* Your question is in the negative.

Q. Let the stenographer repeat the question.

Stenographer [reading from his notes]:

"*Q.* Nor had she suggested to you to lease the estate to you? Pay attention to the question."

A. No.

Q. Between you and her, had there been no conversations regarding the lease of that estate until the night before the day when the deed was signed? *A.* Conversations about a lease?

Q. Yes, sir. *A.* What do you mean?

Q. Let the stenographer read the question.

Stenographer [reading from his notes]:

"*Q.* Between you and her, had there been no conversations regarding the lease of that estate until the night before the day when the deed was signed?"

Mr. Blasini: No.

Attorney Ochoteco: No conversations? *A.* No.

Q. Nor any conversation in connection with the "Juanita" estate, or the "Indios" estate? *A.* Well—

Q. Well, what? *A.* I do not understand your question. I cannot answer as you wish. Pardon me, but if—

Q. I put the question to you and you answer it to me. *A.* I had hopes to lease the "Juanita" estate, and that is all.

Q. My question has not been answered yet. We have gone as far as the hopes. The question is without answer. You have not answered my question. *A.* I am referring to the previous answer.

Q. Meaning what? *A.* It is nothing to be wondered at that I should have expressed my legitimate hopes.

Attorney Ochoteco: I am referring to Mrs. Elvira Olivieri and to yourself.

Mr. Blasini: Maybe I had expressed to her in person—

Q. Did you ever discuss any contract of lease? *A.* I can tell you now that I did not.

Q. You say that it was on that night that you discussed for the first time the contract of lease with her? *A.* Yes, sir.

Q. Did she send for you? *A.* She did not.

Q. And why did you happen to meet? *A.* I went to Mayaguez.

Q. Why did you go to Mayaguez? What made you to undertake the trip to Mayaguez? *A.* My legitimate hope of leasing the "Juanita" estate.

Q. And it was on that night that you made up your mind to go to Mayaguez for the first time and talk with her about a specific lease, a thing that you had not done before? *A.* Yes, sir.

Q. Were you driven by any special circumstance to make up your mind to go that night to Mayaguez? *A.* A very special one.

Attorney Ochoteco: Which is that?

Mr. Blasini: The cancellation of the promissory notes which I carried with me, and which have been submitted in evidence.

Q. Then, these promissory notes had been delivered to you that night? *A.* Yes, sir. That afternoon.

Q. By whom? *A.* By my brother-in-law.

Q. His name? *A.* Manuel Francisco Lluberas-Pasarell.

Q. Why did your brother-in-law deliver to you these promissory notes? *A.* He—

Q. For what purpose did he deliver to you these promissory notes? What for? *A.* He delivered to me the promissory notes because he came home—

Q. For what purpose, is the question?

Judge: To do what?

Attorney Ochoteco: In order to be short—

Judge: What was the purpose?

Mr. Blasini: I took them to Mrs. Elvira Olivieri.

Attorney Ochoteco: Now you understand. In order to be taken to Mrs. Elvira Olivieri. *A.* Yes, sir.

Q. And about what time did your brother-in-law Lluberas arrive? *A.* In the afternoon.

Q. What time? *A.* I do not remember exactly.

Q. More or less? *A.* I never carry a watch. Maybe it was 3, 4, 5, or 6.

Q. Do not you remember the hour exactly? *A.* I do not.

Q. And he delivered to you those promissory notes in order to be taken to Mrs. Elvira Olivieri? *A.* He delivered them to me and I took them to her.

Q. To be delivered to her, yes or no? *A.* Chito delivered the instruments to me because I was going to Mayaguez.

Q. Because you were going to Mayaguez? *A.* Yes, sir.

Attorney Ochoteco: Then you had made up your mind to go or make the trip to Mayaguez before Don Chito had delivered the promissory notes to you?

Mr. Blasini: No.

Q. And when did you make up your mind to go to Mayaguez? *A.* Upon his calling at my house.

Q. Why did you make up your mind to make the trip? *A.* Because he told me that he had cancelled the mortgage credit, originally held by Mario Mercado e Hijos, and then assigned to the heirs and the widow of Tous-Soto, and that the widow of Tous-Soto had been paid $40,000; the 40,000 and odd dollars owed by my aunt Elvira to the widow of Tous-Soto.

Q. Did Don Chito tell you that? *A.* Yes, sir.

Q. And then, upon Don Chito telling you that, what did you do? *A.* Then—

Q. Then did he say to you: "Take these promissory notes to Mrs. Elvira Olivieri?" *A.* He told me as follows: He told me that Mrs. Elvira Olivieri, as soon as these mortgage promissory notes were cancelled, would be released of any obligation to the widow of Tous-Soto.

Attorney Ochoteco: Who had told you that Mrs. Elvira Oliv-

ieri-Commins would be free as soon as the notes were cancelled, to lease the estate? Who had told you that? *A.* There is a deed, if my memory does not fail me, which contains the assignment by Mario Mercado e Hijos to the widow of Tous Soto, submitted in evidence—

Q. Answer the question. *A.* The deed; that is where I got my information.

Q. Then, you mean to say that you had been informed before Don Chito had delivered to you the four promissory notes? How was it that you had knowledge of the existence of a deed between the parties? *A.* There was a mortgage deed with an option, an option to lease and purchase.

Q. Regarding which estate? *A.* In favor of Mario Mercado e Hijos, and another—

Q. Regarding which estate? *A.* And a subsequent one whereby Mario Mercado e Hijos assigned such mortgage credit to Mrs. Belen, widow of Tous Soto.

Q. Reg rding which estate?

Mr. Blasini: The "Juanita" estate and the "Indios" estate.

Attorney Ochoteco: How long had you known of the existence of the deed referred to by you, prior to the day or the afternoon when Mr. Chito Lluberas went to see you? *A.* Do you want to know whether I knew it before?

Q. Do you want the stenographic notes read out to you?

Stenographer [reading from his notes]:

> "How long had you known of the existence of the deed referred to by you, prior to the day or the afternoon when Mr. Chito Lluberas went to see you?"

A. Prior to Chito's coming to see me?

Q. More or less, how long before; a month, two months, a week, can you remember? *A.* I had known it for a long time; for more than two or three months.

Q. Who had told you about this deed? *A.* Mrs. Elvira Olivieri herself had told me. She is my aunt.

Q. Then Don Chito told you, if I am not wrong, that as Mrs. Elvira Olivieri had cancelled the mortgage upon her estates held by the widow of Tous-Soto, he had the promissory notes; did he deliver to you the four notes or obligations?

Mr. Blasini: He had the four promissory notes cancelled.

Q. In connection with this mortgage? *A.* Yes, sir.

Q. Whereupon it occurred to you to go to Mayaguez? *A.* Yes, sir.

Q. Because you knew that once this mortgage had been cancelled, as Mrs. Elvira Olivieri personally had told you, you could lease or buy those estates? *A.* Mrs. Elvira Olivieri never told me that I might purchase or lease from her after the cancellation. It is you who says so.

Q. If my memory does not fail me, a moment ago you said that Mrs. Elvira Olivieri had told you about this right of option to purchase and lease existing in connection with her estates. Did you say that? *A.* I appeal to the record.

Q. No objection to the stenographer reading the question to him.

Stenographer [reading from his notes]:

> "*Q.* If my memory does not fail me, a moment ago you said that Mrs. Elvira Olivieri had told you about this right of option to purchase and lease existing in connection with her estates. Did you say that?"

Attorney Ochoteco: Had you said that?

Mr. Blasini: I never said that Mrs. Elvira Olivieri might do so—

Q. You did not say that?

Attorney Tormes: What the record says.

Judge: I have before me a memorandum of his testimony, where he states that he knew that this deed existed; the mortgage credit in favor of Mario Mercado e Hijos, and then the assignment of the credit to the widow of Tous-Soto, and that he knew it because Mrs. Elvira Olivieri had told him three or four months before the assignment.

Attorney Ochoteco: What had Mrs. Elvira Olivieri-Commins told you? *A.* She had mentioned the deed.

Q. And the option? *A.* She showed me the deed.

Q. Did you see it, did you read it? *A.* Yes, sir.

Attorney Ochoteco: To the witness, then you, as soon as you were informed that the mortgage of the widow of Tous-Soto had been cancelled, you immediately decided to go to Mayaguez?

Mr. Blasini: I went to Mayaguez; I made up my mind instantly.

Q. To go to Mayaguez because Mrs. Elvira Olivieri was free? *A.* If you put it that way—

Q. Was it then that Don Chito told you: "Since you go to Mayaguez, take the promissory notes to her"? *A.* I told him that I was going to Mayaguez, since he informed me that the promissory notes had been paid.

Q. Did you tell Don Chito the purpose of your trip? *A.* I told him that I was going to have a talk with Mrs. Elvira Olivieri.

Q. In connection with what? *A.* He did not ask me.

Q. What is Don Chito to you? *A.* He is my brother-in-law.

Attorney Ochoteco: At that time, were you on friendly terms? Were Don Chito and you on friendly terms as friends and relatives?

Mr. Blasini: Familiarly.

Q. Did you then tell Don Chito that you were going to Mayaguez, when Don Chito told you of the cancellation of the mortgage deed? *A.* Yes, sir.

Q. Did Don Chito either ask you or did you tell Don Chito, the purpose of your going to Mayaguez? *A.* He did not ask me.

Q. And did you tell him? *A.* No, sir.

Q. Then, did he tell you to take the promissory notes? *A.* Yes, sir.

Q. Was that so? *A.* Yes, sir.

Q. And you left immediately for Mayaguez? *A.* Yes, sir.

Q. And you arrived at the home of Mrs. Elvira Olivieri? *A.* Yes, sir.

Q. And did you speak to her of the business?

Mr. Blasini: I greeted her first; we talked.

Attorney Ochoteco: But the purpose you had in mind; the purpose of your trip was the business of the lease of the estate? *A.* That is a matter of interpretation.

Q. I put the question to you and you answer it to me. *A.* The purpose was to greet my aunt, my cousins and other relatives.

Q. Where did you see Don Chito, and this conversation with Don Chito, was it in Ponce? *A.* Yes, sir.

Q. Then, what led you to go to Mayaguez was to greet your aunt, your cousins, etc.? *A.* To congratulate her and at the same time—

Q. Was not your purpose in connection with the lease? *A.* That might also be.

Q. What led you to go to Mayaguez? *A.* My aunt was worrying a lot about a lien which prevented her from selling or leasing without granting priority to the creditors. In this case it was a matter of interpretation. She wanted to be released and she hoped to pay the widow of Tous-Soto and be released from the option clause.

Attorney Ochoteco: Why did you know that she entertained those hopes to be released?

Mr. Blasini: Because she, in confidential talks, had told me: "If I could get the money to pay the widow of Tous-Soto—"

Q. Please proceed with your testimony. Then what led you to go to Mayaguez was to congratulate your aunt on her having paid the mortgage? *A.* Yes, sir, and to realize my legitimate ambition.

Q. What was that ambition? *A.* To lease from her the "Juanita" estate.

Q. And then you arrived there, greeted the family and talked business on that night? *A.* Yes, sir.

Q. Did you reach an agreement with her? *A.* We came to an agreement which was carried out on the following day.

Q. Then was it carried out on the following day? *A.* Yes, sir.

Q. Did not you know at the time (I am referring to the con-

gratulation) that Mrs. Elvira Olivieri-Commins for some days previously had already in her possession the money to pay the mortgage? *A.* Yes, sir.

Attorney Ochoteco: Who was keeping that money?

Mr. Blasini: My brother-in-law Chito, that is, Manuel Francisco Lluberas.

Judge: It is understood that he is Manuel Francisco Lluberas.

Attorney Ochoteco: Did you know that already? *A.* Yes, sir.

Q. That on that day she had already money to pay? *A.* Yes, sir.

Q. Who had told you that? *A.* Chito had told me.

Q. Had he told you? *A.* Yes, sir.

Q. You, of course, did not want to talk to her about that until the mortgage was cancelled, although she had the money already? *A.* Yes, sir.

Q. What made you not to talk to her until the mortgage was cancelled, notwithstanding the fact that Mr. Lluberas had the money in his possession?

Mr. Blasini: So long as a mortgage is not cancelled, you have no right to talk of any other business, as she had said.

Attorney Ochoteco: Did she have; did she have practically the money in her hands; in Senor Chito's hands? *A.* She had not paid.

Q. What prevented you from talking to her; what made you think that you had to wait for the mortgage to be cancelled? *A.* I knew that she was waiting and I did not go. Afterwards, when I knew that she was free, I went.

Q. Did you go next day to finally execute the contract? *A.* Yes, sir.

Q. And to sign the deed? *A.* Yes, sir.

Q. The day following the conversation with Mrs. Elvira Olivieri-Commins? *A.* On the ninth.

Q. What time did you return from Mayaguez that night? *A.* Which night?

Q. The night you talked with Mrs. Elvira Olivieri.

Mr. Blasini: Do you refer to the eighth? Why did not you tell me? I returned between eleven and twelve midnight.

Attorney Ochoteco: Then you went back to Mayaguez on the following day? *A.* Yes, sir. I told my attorney in that case, who is my attorney in the present case, that is, attorney Luis Lopez-de-Victoria, on the morning of the ninth I said to him: "Luis, I have a business in hand, draw up the deed in this and in that way and let us go to Mayaguez to have the deed signed."

Q. Did you come straight from Mayaguez? *A.* On that night, yes; I left Mayaguez and arrived at Yauco.

Q. On reaching Yauco, what did you do? *A.* I slept in Yauco.

Q. Not here in Ponce? *A.* No, sir.

Q. In Yauco? *A.* Yes, sir.

Q. Did Mrs. Elvira Olivieri sell on that day to Don Chito also? *A.* No.

Q. Was it not on that day? *A.* No.

Attorney Ochoteco: Not what?

Mr. Blasini: That she did not sell on that day.

Q. How do you know it? *A.* Because I know it; because it was I who brought the proposals from Mayaguez in case Chito and the sisters wanted to buy.

Q. Then that was some other day? *A.* Will you allow me to explain?

Q. Had you and she agreed on the ninth; I refer to the ninth, were the deed of lease and sale agreed upon and signed? *A.* Yes, of course.

Q. On that same day? *A.* On the ninth.

Q. And where were they signed? *A.* In Mayaguez.

Judge: Please proceed.

Attorney Ochoteco: At what time were they signed? *A.* In the afternoon.

Q. More or less? *A.* May be at 3, 4, 5, or 6. I am very stupid at guessing the hour. I can never get home for lunch exactly on time.

Attorney Ochoteco: What did Mrs. Elvira Olivieri tell you; what message did she send with you to Don Chito?

Mr. Blasini: We talked about what she had in mind. We started by making many estimates and then we reached an agreement.

Q. I am eager to have an answer to my question. May the stenographer be kind enough to read out the last question.

Stenographer [reading from his notes]:

"What did Mrs. Elvira Olivieri tell you; what message did she send with you to Don Chito?"

A. To find out whether Chito wanted to buy.

Attorney Ochoteco: That is the question. Then did Mrs. Elvira Olivieri send with you the message to Don Chito to see whether he wanted to buy? *A.* Yes.

Q. To purchase what? *A.* The estate "Indios", because the other was under a lease. She had verbally promised to lease it.

Q. On that night? *A.* Yes, sir. Verbally.

Q. Did she send any other message to him? *A.* She told me to tell him—

Attorney Ochoteco: Tell us all she told you to tell him.

Mr. Blasini: When talking about the lease and having reached an agreement—

Q. Just a moment. Please tell me everything that Mrs. Elvira Olivieri told you to tell Don Chito.

Judge: You have already told some part. Tell him now the rest.

A. Mrs. Elvira Olivieri gave me a proposal to be submitted to Chito.

Attorney Ochoteco: That is just what I desire to know. *A.* Of course, I tried to ascertain from her.

Q. What do you mean by "ascertain"? *A.* I could not tell you the exact meaning.

Q. What? *A.* As I did not know, more or less, how she was; talking with her I could ascertain more or less where she stood.

Q. Was she your aunt? *A.* Yes, sir. She told me to take the proposal to Chito; that she did not care; that he could bring the deed drawn up; that $1,000 more or less did not matter; that she did not mind because what she wanted—that she had figured and that it was to her advantage to sell the property rather than going on paying interest.

Attorney Ochoteco: I am still waiting for your statement in regard to the proposal.

Mr. Blasini: I had forgotten it. $45,000.

Judge: What do you mean? *A.* $45,000; that she offered to sell him the "Indios" estate for $45,000. Then, there fits in the little word I used. I began to inquire and she told me that $1,000 more or less would not matter.

Attorney Ochoteco: Did you leave Mayaguez with the proposal for Don Chito of the $45,000? *A.* $45,000, and that $1,000 or $1,500 difference would not matter.

Q. Proceed with your testimony. *A.* I then told him.

Judge: Then, you told him? *A.* I reached Yauco—

Attorney Ochoteco: At what time did you reach Yauco?

Mr. Blasini: 11:30, 12 or 12:30.

Attorney Ochoteco: At night? *A.* Yes, sir. More or less.

Q. When you spoke to Don Chito about that, had Don Chito already gone to bed? *A.* I think he was reading.

Q. And did you at that hour inform him as regards the proposal from Mrs. Elvira Olivieri of $45,000? *A.* Yes, sir.

Q. And did he accept? *A.* No.

Q. Did not he say anything? *A.* He said: "Well, it is all right." Then we talked further and figured somewhat.

Q. And did you go to bed? *A.* He went to bed and I left.

Q. Where did you go? *A.* To my father's home.

Q. In Yauco also? *A.* Yes, sir.

Q. What happened next day? *A.* Well, I called at the office of attorney Luis Lopez-de-Victoria and there I told him: "Luis, I have this business on hand."

Attorney Ochoteco: And Don Chito, when did you see him again?

Mr. Blasini: In Mayaguez.

Q. Did you stay in Yauco from March 8 in the evening to March 9 in the morning? *A.* Yes, sir. I slept in Yauco.

Q. Did you sleep from the eighth to the ninth? *A.* Yes, sir.

Q. And in the morning, did you go to see your attorney? *A.* Yes, sir.

Q. You mean attorney Lopez-de-Victoria, and you engaged him to prepare the deed of lease? *A.* Yes, sir, and I gave him every detail of the business to be done.

Q. The terms and other particulars of the lease? *A.* Yes, sir.

Q. Then, when did you see again my colleague Lopez-de-Victoria? *A.* In Mayaguez.

Q. And Don Chito, did not you see him again that morning? *A.* No, sir.

Q. Did you speak to him? *A.* In Mayaguez.

Attorney Ochoteco: And in Yauco?

Mr. Blasini: I did not see him in Yauco.

Q. Did not you see him again in Yauco? *A.* No, sir.

Q. I move for a two-minute recess.

Judge: The court grants the recess.

[Recess of the court.]

Judge: The session of the court is resumed.

Attorney Ochoteco: We have finished our examination.

Judge: Cross-examination.

Attorney Tormes: Nothing.

Judge: Then, some other evidence.

Attorney Ochoteco: We submit in evidence a certified copy of deed number 41 of March 9, 1937.

Judge: Deed number—?

Attorney Ochoteco: Forty-one, of March 9, 1937, executed before notary Luis Lopez-de-Victoria, in regard to lease, by Mrs. Elvira Olivieri-Commins to the spouses Emilio Blasini Totti and Celia Lluberas Pasarell.

Judge: Of what date?

Attorney Ochoteco: March 9, 1937.

Attorney Tormes: No objection as to Lluberas and Blasini.

Attorney Sabater: No objection.

Judge: No objection, let it be marked Exhibit T of the Plaintiff.

[The paper submitted and admitted in evidence as Exhibit T of the Plaintiff is literally transcribed and attached at the end of this transcript as "Exhibit T of the Plaintiff".]

Attorney Ochoteco: We want to tell the court and ask its forbearance. We have only one more witness, Mr. Gilberto Barbosa-Sicardo, who is on his way here already. He left Mayaguez at two o'clock, but we guess he is about to arrive, and he is our last witness. At the same time we want to inform the court that we are going to submit the other case pending upon the same evidence heard in the present case, if there is no objection from the other side, when the case is called in its turn.

Attorney Tormes: All right. We may agree that Mr. Gilberto Sicardo—

Attorney Ochoteco: Let us agree on the following: We would be ready to stipulate that he would testify— We will accept, as submitted this afternoon, the same testimony given by him in the ejectment ptoceeding instituted by Messrs. Lluberas-Pasarell *v.* Mario Mercado e Hijos, such as the same appears from the transcript of the evidence.

Attorney Tormes: With the single incident that we raise the objection. We are going to read it as if the witness were present, and at the proper time we raise the objection, and then my colleague will argue his points of view and the same will be submitted on what appears there.

Judge: Then, what is the stipulation?

Attorney Ochoteco: I would like to hear my colleague state the stipulation.

Attorney Tormes: It is stipulated as follows—

Judge: It is stipulated and agreed upon.

Attorney Tormes: The same is going to be read now by attorney Ochoteco just as if Mr. Barbosa-Sicardo were on the stand. Reading from the transcript of his testimony in the ejectment suit instituted by Messrs. Lluberas *v.* Mario Mercado e Hijos, before this court, and then this side will raise any objection that in our opinion may be raised as the questions are read, and the court will likewise decide.

Judge: Whose testimony is it?

Attorney Ochoteco: Gilberto Barbosa-Sicardo's.

Judge: Given in what action?

Attorney Ochoteco: In civil case number 1086, of this court, *in re* ejectment proceeding, Manuel F. Lluberas et al., plaintiffs, *v.* Mario Mercado e Hijos, defendants, Hon. Roberto H. Todd, Jr., judge.

Judge: Then let the stenographer start reading the testimony.

Attorney Ochoteco: The stenographer is taking down notes. Your attorney will read it.

[Attorney Ochoteco begins to read the testimony as follows:]

"Defendant [Attorney Ochoteco]: What is your name? *A.* Gilberto Barbosa-Sicardo.

"*Q.* Where are you now employed, what is your employment? *A.* Stenographer of the Superintendent of Public Works in the Department of the Interior.

"*Q.* Do you know Mrs. Elvira Olivieri-Commins? *A.* Yes, sir.

"*Q.* How long have you known her? *A.* Ever since I called on her, together with several gentlemen.

"*Q.* Who are they? *A.* Messrs. Ulises Petrilli, Felix Neri Vazquez, Jose Ramon Peralta, Pastor Mandri and attorney Pedro M. Porrata.

"*Q.* Where was the call made? *A.* At the residence of Mr. Rafael Barletta; on the Guanajibo road, within the municipal district of Mayaguez, Puerto Rico.

"*Q.* What was your purpose in calling there? *A.* It was on the occasion of a notarial act of demand served by attorney Pedro M. Porrata on Mrs. Elvira Olivieri-Commins, and I was acting in my capacity as stenographer, to take down the return of such service.

"Defendant: *Q.* What is your experience as stenographer? *A.* Three years working in the court and in law offices.

"*Q.* Did you hear Mrs. Elvira Olivieri-Commins talking? *A.* Yes, sir. And I took down her statements.

"*Q.* Have you with you the stenographic notebook? *A.* Yes, sir.

"*Q.* Could you read from your notebook what you took down of the conversation of Mrs. Elvira Olivieri-Commins? *A.* Yes, sir. Of course.

"*Q.* How did you take down that conversation? *A.* In shorthand.

"*Q.* As she was talking? *A.* Yes, sir. Her answers to the questions of attorney Porrata. Everything, questions and answers.

"*Q.* Please read out—

"Plaintiff: We object."

Attorney Tormes: When we understand that we must object, we will do so.

Attorney Ochoteco [reading]: "Plaintiff: We object."

Attorney Tormes: Now here it would be "Defendant". Let us save time because that will take a long time. We object to the testimony of this witness as to the statements from Mrs. Elvira Olivieri, on similar grounds as those stated by us yesterday and this morning, in opposition to the testimony of Mr. Peralta. We set up the same grounds, and we call the attention of this court to the way in which that was taken. I call the attention of the court to that detail.

Attorney Sabater: We make the same objection.

Judge: Attorney for plaintiff now.

Attorney Ochoteco: In order that the court may hear a recital of the whole incident, I am going to read the whole of it.

Attorney Tormes: This is a trial *de novo*.

Attorney Ochoteco: The court might as well know what took place on that occasion.

Attorney Tormes: It is unnecessary.

Judge: In his testimony in that case, did the stenographer read from his notebook?

Attorney Ochoteco: He read from his notebook, and I want to read to the court the incident between the attorney Lopez-de-Victoria and your attorney, and which arose on the discussion about the admissibility.

Attorney Tormes: There is a very interesting point, and is as follows: these stenographic notes were taken by the stenographer subsequent to the deal of April 6, 1937, and such notes have been transcribed. Mrs. Elvira Olivieri testified as a witness for the plaintiff, and these notes were never submitted to her so as to give an explanation.

[Attorney Tormes argues thereon.]

Judge: You have agreed upon the reading of some testimony given before Judge Todd in the ejectment proceeding, and the same is subject to an objection, of course. The court allows the reading of all that part of the incident that took place before the other justice.

Attorney Tormes: We take exception to the ruling of the court.

Attorney Sabater: We take exception.

Judge: Please proceed with the reading, and of course the court very emphatically states that this was stipulated by the parties, that the testimony given in the above proceeding be read in this case. The parties agreed upon the reading of that portion of the testimony of Mr. Gilberto Barbosa-Sicardo which is transcribed in that record. It is also stated that upon reading that testimony where formerly the word "plaintiff" appears, "defendant" must now be understood, and vice-versa, because in the

present proceeding the parties are quite the opposite of what they were in that ejectment proceeding.

Attorney Ochoteco [reading]:

"Defendant: Please examine this paper which I am showing to you. What is this paper I am showing you?

"Witness: A transcript of the stenographic notes taken by me of the conversation of Mrs. Elvira Olivieri-Commins.

"*Q.* Who made this transcript? *A.* Myself.

"*Q.* Is this a true and faithful transcript of what you took down there? *A.* Yes, sir.

"Defendant: To be submitted—

"Plaintiff: We object on the grounds stated."

Attorney Tormes: Now we are going to reproduce the same objection, such as if it appeared there when the paper was submitted. Our objection is that it is not admissible on the grounds stated, concerning the testimony of Mr. Peralta yesterday and today, and moreover on account of the way of this reproduction.

Judge: Attention was called to it and the parties have stipulated that that testimony be read.

Attorney Tormes: Just as if Mr. Barbosa were on the stand and the paper were going to be submitted to the court for its consideration. In that case we are going to hand to the court that transcript already made by Mr. Barbosa, for the court to decide whether or not it is admissible.

Attorney Ochoteco: All right. Just a minute. When witness Barbosa-Sicardo was about to read from his notebook the stenographic notes, and as I had with me a typewritten transcript of what was in the notebook, it was agreed between the parties, as appears from the record, that instead of the witness reading from his notebook, that copy should be accepted as the matter read from the notebook.

Attorney Tormes: Was this marked as an exhibit?

Judge: It will be marked as an exhibit.

Attorney Ochoteco: This is an unverified copy and my col-

league may see and read it so that he may see that it is a transcript— The witness may testify to this being a true and faithful transcript of what he took down there of that conversation.

[Attorney Ochoteco reads the following:]

"Plaintiff: Yes, we accept the same as having been read.

"Defendant: Please examine this paper which I am showing you. What is this paper I am showing you?

"Witness: A transcript of the stenographic notes taken down by me of the conversation of Mrs. Elvira Olivieri Commins.

"Who took down those notes? *A.* Myself.

"*Q.* And is it a true and faithful transcript of what you took down there? *A.* Yes, sir.

"Defendant: To be submitted—

"Plaintiff: We object on the grounds set forth.

"Judge: Then, with the same limitation previously suggested by the court, this paper is admitted subject to the value that may be given to it in connection with the legal question raised. It is marked Exhibit Q of the Defendants.

"Plaintiff: We object.

"Defendant: Then that is all with the witness.

"Judge: Cross-examination?

"Plaintiff: None."

Judge: What is it the record says?

Attorney Tormes: That is for the court to see.

Attorney Ochoteco: Then the exhibit was submitted, consisting of the transcript of the stenographic notes.

Judge: Let us make everything plain.

Attorney Ochoteco: When witness Barbosa-Sicardo was on the point of reading from his notebook the shorthand notes which he had taken down of the statements of Mrs. Elvira Olivieri-Commins, and as I had with me a transcript which the witness had made of his notes, I therefore suggested to attorney Lopez-de-Victoria to examine the transcript, and if he agreed with the con-

tents of that transcript, that such transcript could then be offered in evidence, to spare the witness the reading from his own notes.

Judge: Was it submitted and accepted in full?

Attorney Ochoteco: Yes, sir.

Judge: Now, what is that which is sought to be submitted?

Attorney Ochoteco: The same paper copied in the transcript of the evidence in civil case number 1086, regarding ejectment proceeding, Manuel F. Lluberas et al. *v.* Mario Mercado e Hijos.

Judge: Is that note attached to the record of the ejectment proceeding?

Attorney Ochoteco: It is here, at the end of the testimony of the witness.

Judge: In that way it would be more handy.

Attorney Ochoteco: Let us do this—

Attorney Tormes: Subject to our checking it up.

Attorney Ochoteco: Let the clerk or the stenographer himself check it up.

Judge: Here is Sicardo. If later on, in order to study this case I have to carry the whole record home, I would have to carry twenty pounds at least unnecessarily.

Attorney Ochoteco: This appears here marked Exhibit of the Court.

Judge: Now, with these papers, all I have to carry is eight or ten sheets of paper which weigh very little.

Attorney Ochoteco: Let us submit then the memorandum that was submitted in the ejectment proceeding above referred to, which memorandum was marked in that proceeding Exhibit Q, that is, the transcript of the statements taken down by witness Barbosa-Sicardo, of the statements made by Mrs. Elvira Olivieri-Commins in her residence.

Attorney Tormes: We object.

Judge: I understand well the case, but this was done because the witness was not here, and his testimony would take a long time. Which are the objections, if any, from the other side?

Attorney Tormes: That this is self-serving evidence. I refer

to the statements made subsequent to March 10 or 9, 1937, on which day there was executed the contract of sale and lease between Mrs. Elvira Olivieri-Commins and the defendants Messrs. Lluberas and Blasini.

Judge: Is that the objection?

Attorney Tormes: That Mrs. Elvira Olivieri-Commins was present here and she was not shown this matter that had been transcribed and prepared beforehand, in order that she might explain with certainty or might refresh her memory as regards certain circumstances or facts.

[Attorney Tormes argues thereon.

[Attorney Ochoteco argues thereon.]

Attorney Sabater: We make the same objection.

Judge: The court admits the stenographic transcript which is marked Exhibit U. It is admitted. Even though it be the testimony of a witness in the way it has been submitted, it is documentary evidence; it is as if it were a deposition and the same must be marked as documentary evidence. What else?

[The paper submitted and admitted in evidence as Exhibit U of the Plaintiff is literally transcribed and attached at the end of this transcript as "Exhibit U of the Plaintiff".]

Attorney Ochoteco: We waive the testimony of Mr. Pastor Mandri because in our opinion it is cumulative evidence, and his testimony would be in regard to the incident of the service of the notarial act of demand on Mrs. Elvira Olivieri-Commins in her residence. We rest.

Judge: The evidence for the plaintiff is terminated. What is the evidence of the defendants?

Attorney Tormes: Mrs. Elvira Olivieri-Commins has just arrived, but I have to file a motion. I have to file a motion, that is, a motion for nonsuit, so that the court may proceed to render a judgment dismissing the complaint filed herein on the ground of absolute lack of evidence in support of its allegations.

Judge: The other side?

Attorney Ochoteco: We file our opposition.

Attorney Sabater: As regards the defendant Mrs. Elvira Olivieri-Commins, we want to make it known that we also are entitled to file a motion for nonsuit.

Attorney Tormes: I am going to argue thereon.

Judge: I only will permit the statements of the grounds.

Attorney Tormes: Before discussing the motion, we must clear a point, and the point is that the plaintiff or the plaintiffs submit now case number 311 and case number 312, on the same evidence.

Attorney Ochoteco: Let us dispose of one thing and then we will take up the other.

Attorney Tormes: As regards the rescission of the contract—

Judge: There is a motion for nonsuit in order to have the complaint dismissed for lack of evidence.

Attorney Tormes: The only specific allegation of the complaint is the one contained in the paragraph 11, which reads as follows:

> "That prior to March 8, 1937, and on the best information and belief of plaintiff, the aforesaid defendant Elvira Olivieri-Commins, as vendor, and the other defendants, as purchasers, while the option clause inserted in the mortgage deed of March 23, 1932, mentioned in paragraph 3 of this complaint was in force, conspired among themselves with the deliberate purpose of defrauding the plaintiff partnership Mario Mercado e Hijos of its right to exercise the right of redemption as agreed in clause 7 of the aforesaid deed number 13 dated March 23, 1932, executed before notary Fernando Zapater-Martinez acting in the place of Jose Tous-Soto, entered into a contract of sale of the estates and condominiums already described in paragraph 9 of this complaint, and marked with the numbers 2, 3, 4 and 5, the purchase price being $40,000.00, all the defendants having notice of the right of option held by plaintiff Mario Mercado e Hijos at the time of such sale in regard to said holdings."

Judge: Did not we say that there would be no arguing? This question has already been heard by the court more than ten times,

and the court need not hear any further argument thereon. The court understands very well the matter.

Attorney Tormes: I am exceedingly glad that the court has so understood the matter.

Judge: I ought to understand the matter. The point has been submitted so often that the court will have no difficulty in determining it.

Attorney Tormes: My congratulations.

Attorney Ochoteco: We oppose the motion because in our opinion that amounts to a decision by the court upon the merits, and because all and each of the averments of the complaint have been shown, or at least there is certain circumstantial evidence that the court should weigh.

Judge: The court is going to rule upon the point. The court dismisses the motion for nonsuit simply because copious evidence has been submitted for weighing the same, and conformable to the jurisprudence of the Supreme Court, where there is evidence subject to be weighed the sustaining of the motion for nonsuit does not lie. The case must be tried on its merits in order to weigh as a whole the evidence from both sides. This is the ruling of the court, without prejudging the matter either in favor or against either side.

Attorney Tormes: I will not take exception. I will submit evidence. We are ready to submit our evidence, and in half an hour we shall have terminated.

Judge: Evidence for the defendants. And now the court wants to know whether the evidence in both cases is joint or separate?

Attorney Sabater: Joint.

Attorney Tormes: To a certain extent, it will be joint, but the time will come when it will be separate.

Judge: When separate it will be let known. Now it is joint, the same for both sides.

Attorney Tormes: We submit in evidence the record in civil case number 7850, of this court, Belen G., widow of Tous-Soto,

in re utility and necessity, that is, moving for leave in behalf of her minor children and of the incapacitated one.

Judge: What number?

Attorney Tormes: Seven thousand eight hundred fifty.

Judge: Had not this document been submitted?

Attorney Tormes: No, sir.

Attorney Ochoteco: There is no objection.

Judge: It is admitted. We are marking with numbers the exhibits of the defendants.

Clerk: Five are the exhibits of defendants already identified. There are some exhibits which have not been submitted and are identified.

Judge: Then, let us start by marking this paper, which shall be marked Exhibit One (1) of the Defendants. Admitted. Let us take up another paper. Another proof.

[The document submitted and admitted in evidence as Exhibit One (1) of the Defendants is literally transcribed at the end of this transcript as "Exhibit Number One (1) of the Defendants".]

Attorney Tormes: We submit in evidence the record of this court, number 203, Belen G., widow of Tous-Soto, *in re* judicial authorization for the cancellation of the mortgage which Mrs. Belen Gonzalez, widow of Tous-Soto, and her children, had bought from Mario Mercado e Hijos, and which was owed by Mrs. Elvira Olivieri-Commins, one of the defendants herein.

Judge: No objection?

Attorney Porrata: We object.

Attorney Tormes: I will withdraw the same for the present.

Judge: Then, is record number 203 withdrawn?

Attorney Tormes: Yes, sir. We submit in evidence a certified copy of deed number 33, dated May 9, 1933, executed before notary Fernando Zapater-Martinez, *in re* assignment of mortgage credit from Mario Mercado e Hijos to Mrs. Belen Gonzalez, widow of Tous-Soto.

Judge: What is the number of the deed?

Attorney Tormes: Thirty-three, of May 9, 1933.

Attorney Porrata: No objection.

Judge: Admitted and marked Exhibit 2.

[The paper submitted and admitted in evidence as Exhibit 2 of the Defendants is literally transcribed and attached at the end of this transcript as "Exhibit 2 of the Defendants".]

Attorney Tormes: Now I will submit in evidence paper identified by the defendants during the testimony of Mrs. Elvira Olivieri-Commins, that is, the notice of that assignment of credit served by attorney Zapater in compliance with the provisions of the Mortgage Law, upon the mortgagee Mrs. Elvira Olivieri, dated March 8, 1937, together with an unverified copy of the notice of assignment of credit above referred to.

Judge: The other side?

Attorney Porrata: No objection.

Judge: Admitted and let it be marked Exhibit 3.

[The document submitted and admitted in evidence as Exhibit 3 of the Defendants is literally transcribed and attached at the end of this transcript as "Exhibit 3 of the Defendants".]

Attorney Tormes: Please the court, we submit now in evidence the original record of this court, record number 203, Belen G., widow of Tous-Soto, regarding the cancellation of the mortgage referred to in that exhibit.

Attorney Ochoteco: Please the court. We object to the submission in evidence of the petition and decision thereon contained in that record, which is what my colleague seeks.

Attorney Tormes: I also seek the evidence.

Judge: The stenographic record?

Attorney Tormes: Yes, sir.

Attorney Ochoteco: We do not object to the submission of the petition and decision thereon. Our objection refers to the admissibility in evidence of the stenographic record, because we do not consider relevant the submission in evidence of such stenographic record. What matters is the decision thereon which gave rise

to the deed of cancellation of the mortgage submitted in evidence by the plaintiff itself.

[Attorney Ochoteco argues at length on his objection.

[Attorney Tormes argues in favor of the admission of the paper in evidence.]

Judge: The court admits the paper and let it be marked Exhibit 4 of the Defendants.

Attorney Ochoteco: We take exception.

[The document submitted and admitted in evidence as Exhibit 4 of the Defendants is literally transcribed and attached at the end of this transcript as "Exhibit 4 of the Defendants".]

Attorney Tormes: We submit, as ours, Exhibit I of the Plaintiff, that is, the verified copy of deed number 47 dated March 8, 1937, *in re* cancellation of mortgage, executed by Mrs. Belen Gonzalez, widow of Tous-Soto, et al., submitted by the plaintiff, and at the same time, I ask leave for substituting such Exhibit I by another thereof, since the latter conains the notice of record in the registry, which is lacking in the copy offered in evidence by the other side.

Attorney Ochoteco: There is no objection.

Judge: No objection to the substitution?

Attorney Ochoteco: No objection.

Judge: Then, Exhibit I of the Plaintiff will be substituted and shall be considered as evidence for both sides. Let it be marked Exhibit 5 of the Defendants.

[The documents submitted and admitted in evidence as Exhibit 5 of the Defendants is truly and faithfully transcribed on page 312 of the transcript of the documentary evidence, which is attached at the end of this transcript.]

Attorney Tormes: We make ours Exhibit B of the Plaintiff, that is, verified copy of deed number 40 dated March 9, 1937, executed before notary Luis Lopez-de-Victoria.

Judge: No objection?

Attorney Ochoteco: None.

Judge: Admitted as evidence and marked Exhibit 6 of the Defendants.

[The document submitted and admitted in evidence as Exhibit 6 of the Defendants is literally transcribed on page 260 of the transcript of the documentary evidence, attached to this transcript.]

Judge: Some further evidence for the defendants.

Attorney Tormes: We submit as our evidence Exhibit G of the Plaintiff, which is a copy of deed number 30, of voluntary mortgage, dated February 25, 1937, executed in Mayaguez by Mrs. Elvira Olivieri-Commins and Mr. Manuel Francisco Lluberas-Pasarell. We make it ours, but we ask the leave of the court to substitute this copy of the deed by a similar one in our possession, but which contains the notice of record in the registry of property.

[Attorney Ochoteco examines the paper submitted by attorney Tormes.]

Attorney Ochoteco: No objection.

Judge: No objection to the substitution?

Attorney Ochoteco: None.

Judge: Then Exhibit G of the Plaintiff is marked Exhibit 7 of the Defendants. Admitted.

[The document submitted and admitted in evidence as Exhibit 7 of the Defendants is literally transcribed on page 303 of the transcript of the documentary evidence which is attached at the end of this transcript.]

Attorney Tormes: We submit now in evidence the four promissory notes, which gave rise to the cancellation of the mortgage and which gave rise to the mortgage in favor of Mario Mercado e Hijos, assigned to the widow of Mr. Jose Tous-Soto.

Judge: Are these papers separate or joined together?

Attorney Porrata: To whom are payable such promissory notes?

Attorney Tormes: To the bearer by endorsement.

Judge: To the bearer by endorsement. No objection?

Attorney Ochoteco: None.

Judge: Admitted and marked as a single exhibit. They are marked Exhibit 8.

[The papers submitted and admitted in evidence as Exhibit 8 of the Defendants are literally transcribed and attached at the end of this transcript as "Exhibit 8 of the Defendants".]

Attorney Tormes: We submit in evidence a certificate issued by the registrar of property of Ponce on November 10, 1939, to the effect that it does not appear from the Registry of Property that Mario Mercado e Hijos, the partnership Mario Mercado e Hijos, nor anybody else made any reservation as to the clause of option to purchase and lease, contained in the deed of mortgage securing such promissory notes, and which was assigned by Mario Mercado e Hijos to Mrs. Belen Gonzalez, widow of Tous-Soto, and her children, and cancelled by Mrs. Belen Gonzalez, widow of Tous-Soto.

Attorney Ochoteco: We object, and our objection refers to the following particular of that certificate, where it is said on page seven: "that from the records just copied and which originated in the aforesaid deeds, it does not appear that the partnership Mario Mercado e Hijos, or anybody else, had made any reservation regarding the option to purchase and lease referred to in the record of the mortgage which was assigned and cancelled." Our objection is as follows: that a registrar of property is not empowered by any statute to issue negative certificates, regarding any particular of the entries on the books of his registry. That his duties are ministerial, exclusively clerical, of literally copying what may appear from the books of his registry. A registrar cannot, under any statute, to do what [*sic*] what has been done by the registrar of the property of Ponce in the present case.

[Attorney Ochoteco argues at length on his objection.]

Judge: Is there any literal certificate of the description of the estate?

Attorney Ochoteco: There is a certificate, but he cannot say that from such a record such thing does or does not appear. He cannot state conclusions.

[Attorney Ochoteco argues thereon.]

Judge: Does the objection refer to the conclusion?

Attorney Ochoteco: It refers to the whole of paragraph three of the certificate.

Judge: This need not be discussed at length

Attorney Ochoteco: I would like to cite you to some jurisprudence.

Judge: Let me have it.

Attorney Tormes [Ochoteco]: The registrar of propesty of Ponce issued a negative certificate of something that does not appear from his books.

[Attorney Tormes [Ochoteco?] argues at length thereon.]

Judge: He says "that from the records just copied and which originated in the aforesaid deeds, it does not appear that the partnership Mario Mercado e Hijos, or anybody else, had made any reservation regarding the option to purchase and lease referred to in the record of the mortgage which was assigned and cancelled". Here is the gist of the question. So that he refers to the estates which are literally described, and that is why the court has stated that not much discussion is needed to be able to determine the point.

Attorney Ochoteco: I was going to cite the case—

Judge: There is no question at all. As regards what has been literally copied, the same is so far admissible.

Attorney Ochoteco: We agree.

Judge: Is the ground of the objection the conclusion in the third paragraph?

Attorney Ochoteco: Yes, sir.

Judge: Then this court will admit the certificate upon the following condition: that if the conclusion set forth by the registrar in the third paragraph of this certificate is supported by the literal transcription of the estates made in the certificate itself, the court will take the same into consideration, and if the same is not so supported, the court shall not be bound to take it into consideration. This means, that the court does not admit the whole

certificate, only the literal transcriptions. And that the other is a question that might be helpful to the court. So that the court will never be bound by the conclusion of the registrar, but that it will examine the literal transcriptions.

Attorney Ochoteco: All right. I think that the court is guided by a high regard for justice, but we desire to cite to the court the decision in *Cuadra et al. v. Lopez et al.*, 35 P.R.R. 433, where it is held that no conclusion or statement made by a registrar of property is admissible in evidence.

[Attorney Ochoteco argues thereon and cites 43 P.R.R. 46; 14 P.R.R. 302; and 27 P.R.R. 750.]

Attorney Tormes: This is very simple. The mortgage law authorizes a registrar of property to issue negative certificates as to a fact that does not appear in the registry.

[Attorney Tormes argues thereon.]

Judge: There is a question here for determination. Of course, this jurisprudence amounts to the same thing that this court was saying, although the court does not have it before it. It must be borne in mind that this certificate begins with the fourteenth record of the estate, that is, the assignment of the credit. The certificate begins here. Preceding this one, there are thirteen more. This certificate begins from record fourteen, which mentions the assignment of the credit in favor of Mrs. Belen, widow of Tous-Soto.

Attorney Ochoteco: Record 12 of estate number 534.

Judge: And at the end it says—

Attorney Tormes: The point is very clear. The registrar certifies negatively that something does not appear from his registry. According to the law, a registrar may negatively certify to something that does not appear from his registry.

Judge: From that certificate of the registrar it does not appear—

Attorney Tormes: That is just what we say and that is all. We maintain that it is a negative certificate of something that does not appear from the registry. That is all.

Judge: The court is going to pass upon this so as not to waste much time, and of course in the spirit already exposed and jurisprudence cited. The court admits the certificate in every particular except in that of its third paragraph, which is transcribed in the record, and which is a conclusion of the registrar. That is, that part thereof which says: "that from the records just copied and which originated in the aforesaid deeds, it does not appear that the partnership Mario Mercado e Hijos, or anybody else, had made any reservation regarding the option to purchase and lease referred to in the record of the mortgage which was assigned and cancelled". It is admitted, except the paragraph 3 of the certificate, and is marked Exhibit 9 of the Defendants.

[The paper submitted and admitted in evidence as Exhibit 9 of the Defendants is literally transcribed and is attached at the end of this transcript as "Exhibit 9 of the Defendants".]

Attorney Tormes: As we have done with former exhibits, we will make ours Exhibit T of the Plaintiff, which the verified copy of deed number 41 of March 8, 1937, *in re* lease, executed by Mrs. Elvira Olivieri-Commins, in favor of Mr. Emilio Blasini-Totti.

Attorney Ochoteco: No objection.

Judge: Then, Exhibit T of the Plaintiff is admitted as Exhibit of the Defendants, and is marked Exhibit 10 of the Defendants. Admitted.

[The paper submitted and admitted in evidence as Exhibit 10 of the Defendants is literally transcribed beginning at page 375 of the transcript of the documentary evidence, and attached at the end of this transcript.]

Attorney Tormes: Now, as oral evidence, we submit the testimony of Mrs. Elvira Olivieri-Commins.

Judge: A five-minute recess.

[Recess of the court.]

Judge: The session of the court is resumed.

Attorney Sabater: We make ours the evidence submitted by my colleague Tormes.

Judge: Then the fact is recorded that all the above evidence

introduced by attorney Tormes is the evidence for all the defendants.

TESTIMONY OF MRS. ELVIRA OLIVIERI-COMMINS.

Attorney Tormes: Your name, madam?

Mrs. Olivieri: Elvira Olivieri-Commins.

X-Q. Have you been sworn in? *A.* Yes, sir.

X-Q. Where were you yesterday? *A.* In Yauco, sick.

Attorney Ochoteco: We admit that she was not in the courtroom.

Attorney Tormes: Do you know Mr. Peralta?

Mrs. Olivieri: Yes, sir.

Attorney Tormes: Do you remember that on April 6, 1937, Mr. Peralta called at your house together with attorney Porrata, and some other people? *A.* In 1937?

X-Q. About April 6, in Mayaguez? *A.* Yes, sir. He did call.

X-Q. Do you remember having talked in the presence of those other people with the gentleman to whom I am referring? *A.* A lot of people called, and I was frightened.

X-Q. Why were you frightened? *A.* Because some of them were in their shirt sleeves and carrying revolvers.

X-Q. Who were carrying revolvers? *A.* I do not remember. I know that I got frightened. As I am a sick person, anything upsets me. I suffer from high pressure, and nerve crisis.

X-Q. Were you warned by anybody that they were going to take down in shorthand what you might say? *A.* I do not remember; I do not think so.

X-Q. While you were talking, was anybody writing down? *A.* No, sir.

X-Q. Do you ever remember Mr. Porrata putting to you the following question: "Tell me, dona Elvira, were not you required when selling the 'Indios' estate, to lease the 'Juanita' estate to Millo?" And that you answered: "When dona Elena offered me the money, $40,000—"

Mrs. Olivieri: That is not true.

X-Q. Did you say that? *A.* That is not true.

Attorney Tormes: Let me finish. "—for the 'Indios' estate, she asked me to lease to her the 'Juanita' estate, for the benefit of her daughters, all of it as a special condition in the event of her buying the estate from me. I accepted because I thought it was a good business, and as I had the rope already almost to my neck, I was broken, I could help it— I also was assisted by counsel." *A.* I did not see Elena.

X-Q. Did you see Mrs. Elena Pasarell? *A.* No, sir. The only thing I said to him was that Elena had a lot of money and could [*sic*] money to her children, to buy it. That is what I said.

X-Q. Did you ever accept or say that you had sold to Mr. Manuel Francisco Lluberas and his sisters or that you had leased to Emilio Blasini the estate "Juanita" prior to March 9, 1937?

Mrs. Olivieri: When Emilio brought me the promissory notes, I then told Millo, "Well, tell Chito to come to draw up the deed of sale."

Attorney Tormes: Did not you say to him that you had sold before March nine? *A.* No, sir.

X-Q. Or that you had agreed to anything prior to March 9, 1937? *A.* No, sir. Subsequent to the payment.

X-Q. And when was it that you consented to sell; prior or subsequent to having effected the payment? *A.* Subsequent to the payment we then took up the negotiations.

X-Q. Tell me, it is said here that attorney Porrata read out to you this clause of option to purchase and lease. Was this clause read out to you? *A.* They did not read that out to me.

X-Q. Did they read out to you the seventh clause of the deed of mortgage? Was this clause read out to you by attorney Porrata? *A.* I do not remember his having read that.

Attorney Tormes: This is all for the present.

Judge: Some further examination?

Attorney Sabater: I make the above examination my own.

Judge: Anything further?

Attorney Ochoteco: Just a moment. I am examining the above

record in the ejectment proceeding. Dona Elvira, have you nothing to ratify or explain as to your statements both this afternoon before the court and on the day when you gave the above testimony? Have you no explanation to make?

Mrs. Olivieri: I have already testified.

Q. Do you remember, dona Elvira, having explained before this court, and I refer to the District Court of Ponce, presided by the Judge R. H. Todd, Jr., in a certain ejectment proceeding, instituted by Messrs. Lluberas-Pasarell against Mario Mercado e Hijos, in regard to the "Indios" estate, in regard to this ejectment proceeding? Do you remember whether you testified?

Attorney Tormes: We object because I have confined myself to examine her in regard to what took place in Mayaguez on April 6, and no other evidence can be brought in.

Judge: The other side.

Attorney Ochoteco: Please the court, the lady has stated that she did not say anything to attorney Porrata, nor to the people who called on her in her home that afternoon, that is to say, the statements set forth in the foregoing exhibit, that is, the stenographic notes taken by Mr. Barbosa-Sicardo. Now I desire to put to her the same questions that I put to her in the other case to which I have referred, inasmuch as she answered the questions just as appears from that stenographic record.

Judge: I think that the lady wishes to say something.

Mrs. Olivieri: I was going to say that they may write anything they please. I cannot know what a stenographer might write. They might have brought fifty witnesses without my knowing it. When all those people arrived I got nervous. I suffer from some serious illness, and I got very sick.

Judge: The court understands well all that, but it wants also to say that the attorneys are doing their duty and that is why they put such questions to you, of course treating you with the utmost consideration. They cannot help doing their duty.

Mrs. Olivieri: They should treat me with a little more consideration.

Attorney Ochoteco: I have done so, dona Elvira, and I will do so. Our purpose is not to annoy you.

Judge: You may put the question to her.

Attorney Ochoteco: Dona Elvira, do you remember, when testifying in the ejectment proceeding before Judge Todd, that the following question was put to you (it was I who put the question): "Was not it exactly on the day when the deed of purchase and lease was signed that you had made up your mind to sell the estate, but you had already sold and leased it before that day?"

Attorney Tormes: We object. She has already answered and it has been explained several times that she leased and sold after having paid.

Mrs. Olivieri: How is that?

Attorney Ochoteco: I am reading the question which appears on page 599 of the transcript of the evidence in the above ejectment proceeding, civil number 1086 of this court. Do not you remember my putting to you this question in the ejectment proceeding? Do not you remember whether I put that question to you in the ejectment proceeding?

Mrs. Olivieri: How is the question that you read?

Attorney Ochoteco: "Was not it exactly on the day when the deed of purchase and lease was signed that you had made up your mind to sell the estate, but you had already sold and leased it before that day?"

Judge: This is the question.

Attorney Ochoteco: Do you remember whether I put that question to you? *A.* I remember that—

Q. Dona Elvira, you will excuse me, because I want to finish as soon as possible. My question is whether you remember that I put that question to you, if you remember it well. *A.* Perhaps I might not remember. It was two years ago.

Q. Might I have put it to you, or might I have not?

Mrs. Olivieri: Yes, sir.

Attorney Ochoteco: Do you remember having answered the question; having expressed yourself as follows (and I am reading

from page 599 of the said stenographic record): "No, sir. I first sold and then paid." *A.* How could I say that?

Q. Then you answered as follows: "No, sir. How can I consent to some thing before it is done." "And when was the agreement reached?" "After the payment was made." "And when was the payment effected?" "I do not remember." Do you remember that incident? *A.* Maybe. It is now two years since that.

Q. Dona Elvira, would you or could you assert to this court that on the day referred by you in your testimony, as to the call made on you by those gentlemen at your residence in Mayaguez, there was no stenographer for taking down your words? *A.* I saw many people going in.

Q. Did you see Mr. Peralta going in? *A.* Yes, sir.

Q. Was he the manager of the Central? *A.* Yes, sir.

Q. Do you know Mr. Mandri?

Mrs. Olivieri: Yes, sir, and the others. On seeing so many people I got frightened.

Mr. Ochoteco: Might not the stenographer have been there without your seeing him? *A.* Yes, sir.

Q. That is all with the lady.

Judge: Any other evidence for the defendants?

Attorney Tormes: Please the court, the defendants Lluberas-Pasarell have no other evidence to introduce.

Attorney Sabater: I want to state that this party makes his all the evidence submitted, and we rest.

Judge: Then the evidence submitted by the defendants is joint evidence.

Attorney Sabater: Yes, sir.

Judge: Then, both sides rest.

Attorney Ochoteco: We submit the case. I think that both cases may be submitted on the same evidence, and a joint brief might be filed in both cases.

Judge: Then this case is terminated. Call the other case.

Clerk: Civil case number 312, Mario Mercado e Hijos *v.* Elvira Olivieri-Commins, *in re* rescission of contract of lease, etc.

Judge: Between the same parties?

Attorney Ochoteco: The same parties.

Clerk: This case includes Emilio Blasini Totti. The case is Mario Mercado e Hijos *v.* Elvira Olivieri-Commins and Emilio Blasini-Totti, defendants, *in re* rescission of contract of lease and other particulars.

Attorney Tormes: We represent defendants Emilio Blasini and his wife, and attorney Lopez-de-Victoria and your attorney represent Mrs. Elvira Olivieri.

Attorney Sabater: I represent attorney Jose O. Sabater.

Judge: Is there any stipulation?

Attorney Ochoteco: The stipulation between the parties represented by their respective counsels is that this case be submitted on the same evidence submitted in civil case number 311, Mario Mercado e Hijos *v.* Elvira Olivieri-Commins et al., it being understood that the evidence submitted in the former case is the same that would be submitted in the present case.

Attorney Tormes: With the same incidents.

Judge: Is there anything to be added or suppressed from the evidence?

Answer: Nothing. The case is submitted on the same evidence as the former case.

Judge: The court approves the stipulation. Now, as to the argument of both cases.

Attorney Ochoteco: Plaintiff proposes to argue the case by means of briefs.

Judge: The other side?

Attorney Tormes: I agree.

Attorney Sabater: I agree.

Judge: As to the initiative?

Attorney Ochoteco: Taking into account that the evidence is very copious, your plaintiff needs the stenographic record for the preparation of its brief. The stenographer has told me that he is extremely busy and that he needs thirty days to be able to finish

the transcript. We ask to be allowed thirty days for filing our brief; a similar term to the defendants; and fifteen days for our reply brief.

Attorney Tormes: And a similar term to us for filing our reply brief. Shall we submit consolidated briefs?

Attorney Ochoteco: No, no.

Judge: Then thirty days to each, the plaintiff to file his brief first, and five days to each side for filing their respective reply briefs.

Attorney Ochoteco: I would suggest that instead of five days we should be allowed ten days. As a rule the reply brief is more aggressive.

Judge: Then ten days to the plaintiff and ten days to the defendants for their respective reply briefs. Therefore, the evidence for both sides having been heard, there only remains the filing of briefs. The court adjourns.

I, Justo M. Bodon, court stenographer of the District Court for the Judicial District of Ponce, Puerto Rico, do hereby certify:

That the foregoing is a true and faithful transcript of the shorthand notes taken by me, in the course of the trial of the above-entitled cases; that said shorthand notes were truly and faithfully represent the statements made during the said trial, including the testimony of the witnesses, orders, decisions and proceedings of the court, as well as the objections, exceptions and statements from counsel for both sides.

I further certify that on this day I have filed a certified copy of this transcript with the record of each of the above-entitled cases, and likewise I have delivered a certified copy thereof to each of the attorneys for the parties.

And for the purpose of the appeal taken to the Supreme Court of Puerto Rico from the judgments rendered in the above-entitled cases, I issue the present certificate in Ponce, Puerto Rico, this tenth day of December, 1941.

JUSTO M. BODON,
Court Stenographer.

EXHIBIT A OF THE PLAINTIFF.

(A true copy of its original.)

No. 73.

ACTUAL PARTITION OF RURAL ESTATES HELD IN COMMON AND OTHER PARTICULARS.

In the City of Yauco, Island of Puerto Rico, on the 20th of August of the year 1936.

Before Me

Tomas Paz y Ruiz, attorney and notary public for said Island, having his domicile and keeping an office in the City of Yauco.

There Appear

Mrs. Elvira Olivieri Commins, of age, single by reason of divorce, property owner and domiciled in the City of Mayaguez; and Mrs. Santia Olivieri Commins and her husband Narciso Ferrer, both of age, married to each other, property owner and domiciled in the City of Yauco; and,

Jose R. Peralta, of age, married, manager of the Central Rufina and domiciled in Mayaguez, which he will prove whenever called upon to do so.

I Certify to my personal knowledge of the above parties and to the truth of their statements as to being of age, married and as to their professions and domiciles.

They Assert to have, and in my opinion they do have, the legal qualifications necessary and sufficient for the execution of the present deed.

And by Virtue Thereof the contracting parties state as follows:

First:—That Mrs. Elvira Olivieri Commins and Mrs. Santia Olivieri Commins are the undivided joint owners, share and share alike of the following estates:

Number One:—A piece of rural property known as Juanita lying in the Pueblo and Quebrada barrios within the municipal

district of Guayanilla. It contains 481.77 cuerdas more or less, equivalent to 189 hectares, 35 ares and 45 centiares, partly flat land applied to sugar canes and partly hilly and wooded land. There is built thereon a dwelling frame house raised from the ground, with galvanized-iron roof, and a shed for storing produce. It is bounded on the north by land of Rafael Lopez, of the Rufina plantation, belonging to Mario Mercado e Hijos, and the Heirs of Domingo Torres represented by Isabel Yordan; on the south by said Rufina plantation; on the west by land of the San Rafael plantation owned by the Heirs of Franceschi, by land of Andres Negroni and by land of Antonio Ramos. On the north (*sic*) by land of the latter, by land of the Heirs of Ramon Lopez, by land of Joaquin Lugo and by the road leading to Piedras Blancas barrio, and on the opposite side by land of Antonio Llabres. Said estate is crossed by part of the railroad track.

Title:—This estate was made up by a consolidation made according to deed No. 169, executed before notary Angel Padro, of Yauco, and dated November 28, 1907.

Number Two:—A piece of rural property known as Los Indios lying in the Indios barrio within the municipal district of Guayanilla with an area of 430 cuerdas, equivalent to 169 hectares, 69 centiares, applied to sugar canes, pastures, saltpeter works and woods. There is built thereon a frame house, roofed with galvanized iron and in part with shingles; another frame house, peon quarters, a house for overseers and some other buildings. It is bounded on the north by the road leading from the Barina barrio to the Indios barrio, of Guayanilla, by land of the sugar cane plantation owned by Trujillo & Mercado, now Mario Mercado e Hijos, and by land of the Heirs of Juan Irizarry; on the east by land of Gabriel Garcia, by land of the Faro plantation owned at present by Mario Mercado e Hijos and formerly by Trujillo Mercado & Company and by mangroves of the maritime zone; on the south by the Yauco river and by land of Mercedes plantation owned by Lluberas Hermanos, and on the west by land of Ulises Olivieri and by land of the Heirs of Antonio Perez.

Title:—This estate was acquired by them by inheritance from their mother, Josefa Commins Raldiris, deceased, as appears from record No. 1, on Fol. 222 of Volume 12 of Guayanilla, estate No. 711, First Record of consolidated property.

Second:—That both estates are at present leased in their entirety to Mario Mercado e Hijos, by deed No. 50, executed in Ponce on April 5, 1927, before notary Francisco Parra Capo for a period of ten years which began to run, as regards estate No. 1, called Juanita, as from March 4, 1928, and maturing on similar day and month of the year 1938, and as regards estate No. 2, called Indios, the time would be computed as from June 2, 1927, to mature on similar day and month of the year 1937.

Third:—Liens. That the undivided half interest owned by Mrs. Santia Olivieri Commins in estate No. 2, above described, is encumbered by a voluntary first mortgage originally executed in favor of the agricultural civil partnership, Mario Mercado e Hijos, domiciled in Guayanilla, by deed No. 12, executed in Mayaguez on March 23, 1932, before notary Fernando Zapater Martinez, acting in the place of his colleague Jose Tous Soto, an authentic copy of which is shown to the notary, whose terms literally transcribed are as follows:

"First:—Mrs. Santia Olivieri Commins, with the consent of her husband Narciso Ferrer y Sardo, and in payment of the amount owed by them to the partnership Mario Mercado e Hijos, as stated in the preceding third paragraph, execute and deliver to said partnership, through the attorney-in-fact, Arturo Cortes Valls, five promissory notes payable to bearer by indorsements, to fall due all of them on March 23, 1939, and subscribed by said debtors for the following amounts:—Promissory note No. One for $3,000.00 as principal, $800.00 for interest thereon and $200 for costs and disbursements.

"Promissory note No. Two for $3,000.00 as principal, $800.00 for interest thereon and $200.00 for costs and disbursements.

"Promissory note No. Three for $3,000.00 as principal, $800.00 for interest thereon and $200.00 for costs and disbursements.

"Promissory note No. Four for $3,000.00 as principal, $800.00 for interest thereon and $200.00 for costs and disbursements.

"Promissory note No. Five for $4571.10 as principal, $1,200.00 for interest thereon and $200.00 for costs and disbursements.

"Said promissory notes (which differ from each other only in their correlative numbers and amounts) are drafted as follows: 'No. . For $. To become due on March 23, 1939. We promise to pay to the holder by indorsement of this promissory note on day 19 , the sum of received to our entire satisfaction as a loan. This amount will bear interest at 9% annually until fully paid, payable semi-annually at the expiration of each semester. This is promissory note No. , of a series of five, totalling $. To secure the above sum, $ for interest thereon and $ for costs, expenses, disbursements and attorney's fees we have executed a voluntary mortgage in favor of the holder by indorsement of said promissory notes in public deed No. 12 of even date before notary Fernando Zapater Martinez, acting in the place of Jose Tous Soto, upon a one-half interest belonging to us in a jointly owned estate called Los Indios lying in the Indios barrio of the municipal district of Guayanilla, Puerto Rico, and having an area of 430 cuerdas. It is stipulated that by failing to pay three semi-annual installments of interest when becoming due, the obligor shall forfeit the right to avail herself of the term for the payment of the principal and this promissory note may be recovered by summary or ordinary proceedings. Mayaguez, Puerto Rico, March 23, 1932.

(Sgd.) SANTIA O. DE FERRER.
N. FERRER.

"'Affidavit No. . Subscribed before me by the spouses Mr. Narciso Ferrer Sardo and Mrs. Santia Olivieri Commins, both of age, property owners and domiciled in Yauco, Puerto Rico, to whose personal knowledge I certify in Mayaguez on March 23, 1932.

(Sgd.) F. Zapater, Notary Public.'

(There is affixed thereto the notarial seal and affixed thereto and cancelled a $0.25 internal revenue stamp.

"Second:—Mrs. Santia Olivieri y Commins with the express consent of her husband Mr. Narciso Ferrer y Sardo, constitutes voluntary mortgage upon her jointly owned interest in the estate above described, to secure all and each of the promissory notes referred to in the foregoing clause, which lien shall encumber such condominium until the mortgage hereby constituted is legally cancelled. Said mortgage will secure in addition to the principal of the aforesaid promissory notes, the sum of $4,400.00 for interest and $1,000.00 for costs, expenses, disbursements and attorney's fees in case of judicial recovery and demandable as a penalty in such event without the necessity of a liquidation.

"Third:—Mrs. Santia Olivieri y Commins, with the express consent of her husband Mr. Narciso Ferrer y Sardo, and Mr. Arturo Cortes Valls in behalf of the partnership Mario Mercado e Hijos, appraise the mortgaged condominium at $50,000.00 and waive any appraisal or action for such purpose.

"Fourth:—Mrs. Santia Olivieri Commins, with the express consent of her husband Mr. Narciso Ferrer y Sardo, agrees with the partnership Mario Mercado e Hijos that out of the rentals to which they are entitled under the contract of lease referred to in the second paragraph of this deed, that is, the sum of $4,100.00, said partnership shall retain, to be applied to the payment of the interest accrued, the sum required to cover the above amount, such retention to begin

on June 2, 1932, and so on every time the same becomes due, that is, on March 4 and June 2 of each year.

"Fifth:—It is stipulated that by failing to pay three installments of interest upon becoming due, the obligors shall forfeit the right to avail themselves of the term allowed for paying the principal and the obligee may recover judicially on all or either of the promissory notes my [*sic*] means of a summary or an ordinary action.

"Sixth:—If at the termination of the contract of lease referred to in paragraph second of this instrument the mortgage promissory notes have not been paid, the obligors or their assignees or successors in interest bind themselves to impose upon any lessee the obligation to deduct from the rentals agreed upon the necessary sums for the payment of the interest owing to Mario Mercado e Hijos and to effect such payment to said partnership on the account of the obligors, as stipulated in clause 4 of this deed.

"Seventh:—Option to Purchase and Sell and to Lease:—Notwithstanding the foregoing clause the debtors, as part of the consideration of this contract, agree with the partnership Mario Mercado e Hijos, so long as the mortgage credit herein constituted is not paid, to grant it priority to purchase and sell or lease their undivided joint interests in the estates Indios and Juanita upon the same price and terms. To this effect, the debtors shall advise, unless such mortgage credit is paid, by registered letter to Mario Mercado e Hijos, of any offer of sale or lease made to them and said partnership shall be granted thirty days for accepting or refusing such offer and during said period the debtors cannot sell or lease to anybody else. Should there be a sale or lease in violation of this agreement, Mario Mercado e Hijos shall be entitled to repurchase from the purchaser or lessee, which right it can exercise for thirty days from the record of such sale or lease for subrogating itself to the place, degree or priority of the purchaser or lessee.

"Eighth:—Waiver of Homestead. Mrs. Santia Olivieri y Commins, with the express consent of her husband Narciso Ferrer y Sardo, states that no homestead right has been constituted by her upon her joint interest in the mortgaged estate nor has she the intention of constituting it, but should she do so in the future, from now and for all time, she waives the same in favor of the partnership Mario Mercado e Hijos, its assignees, successors in interest, in consideration of the present contract.

"Ninth:—Cancellation. In consideration of the present mortgage, the partnership Mario Mercado e Hijos proceeds to cancel the mortgage constituted by Mrs. Santia Olivieri y Commins in favor of said partnership and which has been referred to in the third paragraph of this instrument, willing and consenting that such cancellation be recorded in the proper registry of property.

"Tenth:—The parties hereto expressly agree that the obligors may pay at any time before maturity the amount of any of the promissory notes above mentioned and interest thereon, provided they give notice to the obligees three months prior to the time when they intend to effect such payment.

"Eleventh:—The parties likewise agree that the actual partition of said estate cannot be carried out without the consent of Mario Mercado e Hijos so long as the mortgage herein constituted is in force.

"Twelfth:—The parties likewise expressly state that the lessors have received all back rentals up to date regarding the estate described and that in the present case they have received a check for $1,500.00 on the Banco de Ponce in settlement of the annual installment becoming due in the current month of March.

"Thirteenth:—All the expenses incurred by reason of the present deed, copy thereof and record in the registry of

property and those of cancellation, copy thereof and record shall be for the account of and chargeable to the obligors.

"Fourteenth:—The parties hereto agree to the present deed as the same is drafted in conformity with the terms agreed upon by them; and I the notary in compliance with the statute advised them as to the law as applicable in the premises."

As Regards the Undivided Half Interest in Estate Number One owned by the party hereto, Mrs. Santia Olivieri Commins, the same is free from any mortgage lien but subject to said lease.

Liens Affecting Mrs. Elvira Olivieri Commins: That the undivided half interest owned by the appearing party Mrs. Elvira Olivieri Commins in each of the above two estates, are subject, besides said lease, to another voluntary first mortgage originally executed in favor of the said partnership Mario Mercado e Hijos to secure an indebtedness amounting to $41,256.89, constituted by deed No. 13 executed in Mayaguez on March 23, 1932, before notary Fernando Zapater Martinez, acting in the place of his colleague Jose Tous Soto, an authentic copy of which is shown also to the notary, whose terms literally transcribed, are as follows:

"First:—Mrs. Elvira Olivieri Commins, in payment of the amount owed by her to the partnership Mario Mercado e Hijos, as stated in the preceding third paragraph, executes and delivers to said partnership through the attorney-in-fact, Arturo Cortes Valls, four promissory notes payable to bearer by endorsement, to fall due all of them on March 23, 1939, and subscribed by said lady for the following amounts:

"Promissory note No. One for $10,000.00 as principal, $2,000.00 for interest thereon and $500.00 for costs.

"Promissory note No. Two for $10,000.00 as principal, $2,700.00 for interest thereon and $500.00 for costs.

"Promissory note No. Three for $10,000.00 as principal, $2,700.00 for interest thereon and $500.00 for costs.

"And promissory note No. Four for $11,256.89 as principal, $3,000.00 for interest thereon and $500.00 for costs.

"Said promissory notes shall differ from each other only in their correlative numbers and amounts. They are as follows:

"'No. . For $. To become due . I promise to pay to the holder by indorsement of this promissory note on day, 193 , the sum of . received to my entire satisfaction as a loan. This amount will bear interest at 9% annually until fully paid, payable semi-annually at the expiration of each semester. This is promissory note No. , of a series of four, totalling $. To secure the above sum, $ for interest thereon and $ for costs, expenses, disbursements and attorney's fees I have executed a voluntary mortgage in favor of the holder by indorsement of said promissory notes in public deed No. 13 of even date before notary Fernando Zapater, acting in the place of Jose Tous Soto, upon a one-half interest belonging to me in two jointly owned estates, one of them called Juanita, with an area of 481.77 cuerdas more or less, lying in the Pueblo and Quebrada barrios of the municipal district of Guayanilla, Puerto Rico, and the other, called Los Indios, with an area of 430 cuerdas, lying in the Indios barrio of the municipal district of Guayanilla, Puerto Rico, Mayaguez, Puerto Rico, March 23, 1932.

(Sgd.) ELVIRA OLIVIERI.

"'Affidavit No. . Subscribed before me by Mrs. Elvira Olivieri Commins, of age, a divorcee, property owner, and domiciled in Yauco, Puerto Rico, whom I certify to know personally, in Mayaguez, Puerto Rico, on March 23, 1932.

(Sgd.) F. Zapater, Notary Public.'

(There is affixed thereto and cancelled a $0.25 internal revenue stamp and affixed thereto the notarial seal.)

"Second:—Mrs. Elvira Olivieri Commins constitutes a voluntary mortgage upon her jointly owned interests in each of the estates above described to secure all and each of the promissory notes referred to in the foregoing clause, which lien shall encumber such condominiums until the mortgage hereby constituted is legally cancelled. Said mortgage will secure in addition to the principal of the aforesaid promissory notes the sum of $11,100.00 for interest thereon and $2,000.00 for costs, expenses, disbursements and attorneys fees in case of judicial recovery and demandable as a penalty in such event without the necessity of a liquidation.

"Third:—Mrs. Elvira Olivieri y Commins and Mr. Arturo Cortes y Valls, in behalf of the partnership Mario Mercado e Hijos, appraise the mortgaged condominiums, waiving any new appraisal or action for such purpose, as follows:

"The jointly owned interest in the estate described in the first place at $25,000.00.

"The jointly owned interest in the estate described in the second place at $50,000.00.

"Fourth:—Mrs. Elvira Olivieri Commins agrees with the partnership Mario Mercado e Hijos, that out of the rentals to which she is entitled under the contract of lease referred to in the second paragraph of said deed, that is, the sum of $4,100.00, said partnership shall retain, to be applied to the payment of the interest accrued, the sum required to cover the above amount, such retention to begin on June 2, 1932 and so on every time the same becomes due, that is, on March 4 and June 2 of each year.

"Fifth:—It is stipulated that by failing to pay three installments of interest upon becoming due, the obligor shall forfeit the right to avail herself of the term allowed for paying the principal and the obligee may recover judicially on all or either of the promissory notes by means of a summary or an ordinary action.

"Sixth:—If at the termination of the contract of lease

referred to in paragraph second of this instrument the mortgage promissory notes have not been paid, the obligor or her assignees or successors in interest bind themselves to impose upon any lessee the obligation to deduct from the rentals agreed upon the necessary sums for the payment of the interest owing to Mario Mercado e Hijos and to effect such payment to said partnership on the account of the obligor, as stipulated in clause 4 of this deed.

"Seventh:—Option to Purchase and Sell and to Lease:—Notwithstanding the foregoing clause, the debtor, as part of the consideration of this contract, agrees with the partnership Mario Mercado e Hijos, so long as the mortgage credit herein constituted is not paid, to grant it priority to purchase and sell or lease her undivided joint interests in the estates Indios and Juanita upon the same price and terms. To this effect, the debtor shall advise, unless such mortgage credit is paid, by registered letter to Mario Mercado e Hijos, of any offer of sale or lease made to her and said partnership shall be granted thirty days for accepting or refusing such offer and during said period the debtor cannot sell or lease to anybody else. Should there be a sale or lease in violation of this agreement, Mario Mercado e Hijos shall be entitled to repurchase from the purchaser or lessee, which right it can exercise for thirty days from the record of such sale or lease for subrogating itself to the place, degree or priority of the purchaser or lessee.

"Eighth:—Waiver of Homestead. Mrs. Elvira Olivieri Commins states that no homestead right has been constituted by her on any of the estates hereinbefore described, but that should she do so in the future, from now on and for all time, she waives the same in favor of the partnership Mario Mercado e Hijos, its assignees or successors in interest, in consideration of the present contract and during the life thereof.

"Ninth:—It is stipulated by the parties that the obligor

may pay at any time before maturity the mortgage credit herein constituted or to pay on account thereof any amount not below $5,000.00, provided she serves notice on the obligee three months prior to the time when she intends to effect the payment of the principal or the sum on account of such principal.

"Tenth:—The parties likewise expressly state that the lessor has received all back rentals up to date regarding the estate described and that in the present case she has received a check for $1,500.00 on the Banco de Ponce in settlement of the annual installment becoming due in the current month of March.

"Eleventh:—The parties likewise agree that the actual partition of said estates cannot be carried out without the consent of Mario Mercado e Hijos so long as the mortgage herein constituted is in force.

"Twelfth:—For the purpose of the Registry, the mortgage lien affecting the condominiums is prorated as follows:

"The jointly owned interest in the estate described in the first place shall answer for:

"The sum of $12,379.08 as principal,—

"The sum of $3,330.00 as interest,—

"The sum of $600.00 for costs.

"And the jointly owned interest in estate No. 2 shall answer for the sum of $28,877.81 as principal,—

"The sum of $1,400.00 for costs, expenses and attorney's fees, and for interest on $7770.00.

"Thirteenth:—All the expenses incurred by reason of the present deed, copy thereof and record in the Registry of Property and those of cancellation at the proper time, copy thereof and record shall be for the account of the obligor.

"Fourteenth:—Each of the parties hereto, as far as the same is concerned, agree to the present deed in every respect as conformable to the terms agreed upon.

"At this stage, the parties hereto state that the sum men-

tioned in paragraph 3 of this deed owed by Mrs. Elvira Olivieri y Commins to the partnership Mario Mercado e Hijos, amounting to $41,256.89, represents the whole amount of her indebtedness up to date, including everything."

Explanation Concerning Mrs. Santia Olivieri y Commins. For a better understanding, it is now explained that in the mortgage deed constituted by Mrs. Santia Olivieri y Commins previously mentioned, the following fact, which precedes the terms above described was set down, which literally transcribed reads as follows:

"Third:—That Mrs. Santia Olivieri Commins and her husband Narciso Ferrer Sardo acknowledge to owe to Mario Mercado e Hijos the following sums:

"In current account with liquidated interest up to date, $7282.50.

"A mortgage credit constituted by said spouses, according to deed No. 67, dated July 30, 1924, executed before notary Carlos F. Chardon. The same is recorded in the Registry of Property of Ponce on Folio 229 of Volume 12 of Guayanilla, estate No. 524, Record , for $6,000.00, amounting with liquidated interest up to date to $9288.60. Total: $16,571.10.

"Fourth:—That by common consent of the herein parties, said estate Juanita was surveyed, which survey resulted in the following area and description:

"Rural:—An estate known as 'Juanita' lying in the Pueblo and Quebrada barrios of the municipal district of Guayanilla, P.R., with an area of 81.77 cuerdas of flat land applied to sugar canes and 378.91 cuerdas of wood and pasture land, and a water pump for irrigating said canes and a frame house with the galvanized-iron roof in poor condition. It is bounded on the north by land of the Heirs of Antonio Ramos, of Jesus Rodriguez, of Ricardo Rodriguez, of Dr. Jose Cobian, and of the Heirs of Lugo and a municipal road

separating land partly of Mario Mercado e Hijos; on the south by land of Mario Mercado e Hijos and partly by a municipal road separating land of said concern, by land of Santia de la Cruz de Pacheco, of Catalina Tirado and of Mario Mercado e Hijos; on the east by land of the aforesaid Mario Mercado e Hijos; on the northwest by land of the Heirs of Antonio Ramos and of Joaquin Diaz; and on the west by land of Joaquin Diaz, of Herminia Morales, and the woodland of the San Rafael plantation, of the Heirs of Angela and Dario Franceschi; on the southwest by land of Mario Mercado e Hijos. This estate is crossed from south to the northwest by the tracks of the American Railroad Company of Puerto Rico. Its area is 460.68 cuerdas equivalent to 181 hectares, 6 ares and 57 centiares."

And for the purpose of this actual partition the interested parties Mrs. Santia and Mrs. Elvira Olivieri Commins mutually agree in appraising and assessing said estate at $25,000.00 as its present value, each of them being therefore entitled to one-half of such sum.

Fifth:—Appraisal and Partition with Segregations of the Estate "Los Indios".—And likewise, the appearing parties, Mrs. Santia and Mrs. Elvira Olivieri Commins, for the purpose of the present actual partition, mutually agree in appraising and assessing the estate "Los Indios" described in the first paragraph of this deed, marked No. 2, in the sum of $50,000.00, each of them being entitled to one-half thereof because according to their estimates such is its present value; and having surveyed the same for the purpose of this partition, the same turned out to contain within its boundaries, an area of 477.77 cuerdas, equivalent to 187 hectares, 78 ares, 27 centiares and 21 miliares, showing an excess of 47.77 cuerdas over its recorded area above referred to, and based on the area of the above survey they proceed to partition said estate and it is hereby partitioned into the following parcels or segregations:

Parcel No. One: Rural. A parcel of land containing 79.46

cuerdas, equivalent to 31 hectares, 23 ares, 8 centiares, 79 miliares, lying in the Indios barrio within the municipal district of Guayanilla, which are subdivided in the following five parcels, which, according to the plat of the survey made by engineer Juan Herminio Sanchez Diaz on December 5, 1935, which according to a blue print which the notary has before him, are marked as follows: Parcel "A" with an area of 41.26 cuerdas known by the name of Cupey of flat land planted to sugar canes; Parcel "B" containing 4 cuerdas of flat land, planted to sugar canes; Parcel "C" having 20.52 cuerdas of semiflat land at present planted to lesser crops; Parcel "D" containing 1.78 cuerdas of semiflat land planted to lesser crops; and Parcel "E" containing 12 cuerdas of semiflat land planted to lesser crops. The whole tract is bounded as follows: on the north by land of Santia Olivieri, the track of the American Railroad Company and from the west angle of Parcel "D" by the municipal road leading from Guayanilla to the Boca barrio; on the south by land of Arturo Lluberas and nephews, by the Yauco river, by a 0.30-cuerda undivided parcel containing the pump and belonging to Santia and Elvira Olivieri Commins, and with land of Santia Olivieri Commins; on the east by land of Santia Olivieri, and on the west by land of Mariano Lugo, by land of Ramon Ramirez, and by an old road which divided land of Ramon Lluberas, Luis Cervoni, Dolores Lopez and land of Luis Cervoni and on the southwest land of Arturo Lluberas and nephews. The fact is recorded that all along the east there is a private road belonging to Santia and Elvira Olivieri, 6-meter wide, which proceeds along the west side of Parcel "B" as far as the undivided 3.30-cuerda parcel where the irrigation pump stands. Within this tract, but enclosed by said Parcel "C" there is a small parcel of land jointly owned by Santia and Elvira Olivieri with an area of 0.25-cuerda and there is built thereon a small house with a concrete foundation for a pump. And it is hereby explained that the aforesaid parcels marked letters "E" and "D" are separated, the former, partly on its east side, by the road leading from Guayanilla to Boca barrio and the

latter by the railroad track, both in connection with Parcel "C", and the former is also separated in connection with the latter by the said railroad track.

Parcel No. Two:—Portion or parcel of saltpeter land lying in the Indios barrio of the municipal district of Guayanilla and bounded: on the north by land of Mario Mercado e Hijos; on the south with a cano within the land of Santia Olivieri; on the east by the Caribbean Sea and on the west by a 6-meter wide road, three meters of which is part of this parcel and the other three meters part of the parcel of land belonging to Santia Olivieri. Its area is 41.99 cuerdas, equivalent to 16 hectares, 50 ares, 37 centiares and 7 miliares of saltpeter land.

Parcel No. Three:—Parcel of land lying in the Indios barrio of the municipal district of Guayanilla, which will hereinafter be called Los Indios, with an area of 355.77 cuerdas, equivalent to 139 hectares, 83 ares and 18 centiares, which according to the kind of land for the purposes of cultivation may be divided as follows: the first parcel is of an area of 165.84 cuerdas of hilly land devoted to woods and brush and a portion of semiflat land applied now to lesser crops and the remaining four parcels appear in another survey made by said surveyor Sanchez Diaz, dated the same as the other, a blue print of which is shown to the notary and marked with their respective areas as follows: Parcel "F" of flat land planted to sugar canes with an area of 140.64 cuerdas; Parcel "G" with an area of 3.20 cuerdas of flat land not under cultivation; Parcel "H" measuring 12.90 cuerdas of semiflat land devoted now to lesser crops; and Parcel "I" with an area of 33.19 cuerdas of saltpeter land. This estate is bounded on the north by a local road separating almost in all its whole length land belonging to Mario Mercado e Hijos, and land of Isabel Santiago, of Arturo Lluberas and of the widow of Pedro Torres; on the northeast by land of Mario Mercado e Hijos and of the Heirs of Juana Damasa Martinez and by land again of Mario Mercado e Hijos and of Mrs. Elvira Olivieri; on the east by the Caribbean Sea; on the south by the Yauco river and by land of Arturo Llu-

beras y Sobrinos; and on the west by land of Mariano Lugo, of Ramon Ramirez and by another land of Mariano Lugo and by land of Mrs. Elvira Olivieri and by the undivided parcel measuring 0.30 of a cuerda of Mrs. Santia and Elvira Olivieri. On the southwest of this parcel there lies the 0.30-cuerda undivided parcel above referred to reached by a road called the pump road, six meters wide all along its length, which road belongs to Mrs. Elvira and Mrs. Santia Olivieri in the proportion of three meters each. There is built thereon a frame house with the galvanized iron roof in poor condition, with walls in a ruinous condition and a stack and several frame houses with galvanized-iron roof for lodging peons. It is hereby explained that the aforesaid first parcel of hilly and semiflat land lies on the north side of the railroad track and of the municipal road leading to Boca barrio of Guayanilla; and over Parcel "H" there is a railroad track built by the Central Rufina which leads to the latter.

Parcel No. Four:—An undivided rural parcel measuring 0.30 of a cuerda equivalent to 11 ares, 79 centiares and 12 miliares with a small house thereon fenced and roofed with galvanized-iron, with a steam pump with every accessory and pipes for pumping water from the Yauco river for the irrigation of the estates belonging to Santia and Elvira Olivieri, situated in the Indios barrio of the municipal district of Guayanilla and bounded as follo[illegible]e north by land belonging to Elvira Olivieri Commins; on the south by the Yauco river; on the east by land belonging to Santia Olivieri Commins and on the west by land belonging to Elvira Olivieri Commins.

Parcel No. Five:—Rural: an undivided parcel of land measuring 0.25 of a cuerda, equivalent to 9 ares, 82 centiares and 60 miliares, possibly destined to have installed thereon a pump for drawing water from adjacent springs, with a cement foundation with a small house roofed and fenced with galvanized-iron and pipes. This parcel of land is situated in the Indios barrio of the municipal district of Guayanilla and bounded as follows: on the north, west and east by Parcel "C" of the estate belonging to

Elvira Olivieri Commins; and on the south by Parcel "A" known as Cupey from the same estate of Elvira Olivieri Commins.

Assessed Value of the Five Parcels in which the Estate Los Indios Has Been Divided and Segregated:—

As above set forth the whole of the estate Los Indios was appraised at $50,000.00, and the purpose of the present partition such parcels are assessed by mutual agreement between the interested parties Mrs. Elvira and Mrs. Santia Olivieri Commins as follows:—

Parcel No. One at $11,425.00;—

Parcel No. Two at $800.00;—

Parcel No. Three at $36,875.00;—

Parcel No. Four, the land thereof at $100.00 and the pump with all its accessories at $700.00; and,

Parcel No. Five at $100.00.

All the above assessments amount to $50,000.00 at which the whole of the aforesaid estate Los Indios was assessed.

Sixth:—Termination of the Joint Ownership and Valuation of the Jointly Owned Estates.—Consequently Mrs. Santia and Mrs. Elvira Olivieri Commins hereby resolve to put an end to their joint ownership in the estates described and called Juanita and Los Indios, which have been previously assessed, the former at $25,000.00 and the latter at $50,000.00, totalling $75,000.00, each of them therefore being entitled to the sum of $37,500.00, respectively, and to that effect they ratify the partition of the aforesaid estate Los Indios into the five parcels such as the same are described in the foregoing paragraph fifth of this deed with the values therein stated and in order to satisfy the sums to which each is entitled, they proceed to make the following adjudications:—

Mrs. Elvira Olivieri Commins is entitled to the sum of $37,500.00 and in satisfaction thereof the following properties are allotted to her:—

First: Full ownership of the estate described by the name of

Juanita in the fourth paragraph of this deed consisting of 460.58 cuerdas and at the assessed value of $25,000;—

Second: The full ownership of Parcel No. One described in the fifth paragraph of this instrument consisting of 79.46 cuerdas and valued at $11,425.00;—

Third: The full ownership of Parcel No. Two known as saltpeter land described in No. Two of the fifth paragraph of this deed and valued at $800.00;—

Fourth: The $50.00 undivided half interest in the $100-worth Parcel No. Four described under this same number in the fifth paragraph of this instrument, consisting of 0.30 of a cuerda and a $175-worth interest in the value of the pump standing on said parcel, which pump was appraised at $700.00, making a total of $225.00 of the value of the said land and pump; and,

Fifth: The $50.00 undivided half interest in the $100-worth Parcel No. Five described under the same number in the fifth paragraph of this deed, consisting of 0.25 of a cuerda.

Total amount adjudicated to Mrs. Elvira Olivieri Commins: the sum of $37,500.00, which is the value of her share in the property held in common received by her in full settlement thereof.

Mrs. Santia Olivieri Commins is entitled to the sum of $37,500.00 and in satisfaction thereof, the following properties are allotted to her:—

First: Full ownership of Parcel No. Three, now also called Los Indios which is described under this number in the fifth paragraph of this deed, consisting of 355.77 cuerdas with all its appurtenances and annexes and at the assessed value of $36,875;—

Second: The $50 undivided half interest in the $100.00-worth Parcel No. Four described under this same number in the fifth paragraph of this instrument consisting of 0.30 of a cuerda and a $175-worth interest in the value of the pump standing on said parcel, which pump was appraised at $700.00, making a total of $575.00 of the value of the said land and pump.

Third: A $50.00 undivided half interest in the $100.00-worth

Parcel No. Five described under this number in the fifth paragraph of this deed, consisting of 0.25 of a cuerda.

The total sum adjudicated to Mrs. Santia Olivieri Commins is $37,500.00 which is the value of her share in the property held in common received by her in full settlement thereof.

Supplementary Conditions

First:—Life of the Contract of Lease and Distribution of the Rentals:—

The present dissolution of the joint ownership between Mrs. Santia and Mrs. Elvira Olivieri Commins in connection with the aforesaid estates Juanita and Los Indios is made without prejudice to the continuation in force until its expiration of the existing lease in favor of Mario Mercado e Hijos, which will continue to exist until the same is extinguished in the same manner and extension as if this partition had not taken place; but the lease rent shall be distributed as follows: the lease rent corresponding to the estate Los Indios from June, 1936, to June, 1937, shall be distributed and paid in equal shares, that is $2,600 for each of them; the annual lease rent corresponding to the estate Juanita from March, 1937, to March, 1938, the prorated share from March, 1937 to be counted from the 4th of said month to June 2, 1937 shall be distributed and paid in equal shares to Mrs. Elvira and Mrs. Santia Olivieri Commins, and the remainder of said lease rent shall belong in full to Mrs. Elvira Olivieri Commins.

Second:—Final Conveyance of Ownership and Inheritance Rights.—Mrs. Santia and Mrs. Elvira Olivieri Commins, in full payment of their holdings, mutually convey to each other full ownership of each of the properties adjudicated to each of them, including every title, right or interest that they may have in said properties.

And by virtue thereof, Mrs. Santia and Mrs. Elvira Olivieri Commins mutually execute to each other the respective total release and acquittance.

Third:—As each of the above parties is entitled to three meters,

that is, half the width of the pump road which is six meters wide and which leads from the Boca barrio road as far as the 0.30 of a cuerda undivided parcel, both parties bind themselves to neither close nor narrow it, each party being entitled to the use without limitation of the road for the traffic of vehicles, fruits, workmen, etc.

The repairs of the above mentioned road shall be for the account of both parties or their successors in equal shares.

Fourth:—As the properties adjudicated to Mrs. Santia Olivieri need for the irrigation the waters proceeding from the springs existing on the lands of Cupey adjudicated to Mrs. Elvira Olivieri Commins and whose waters follow their natural course to the sea through the lands of Mrs. Santia Olivieri Commins, it is agreed to this effect by both parties as follows:

(A) Mrs. Elvira Olivieri and/or her successors in interest are entitled to draw, by means of pumps for the purpose of irrigation, water from the Gran Zanja, from the springs and/or from the subsoil, in the Parcels "A", "B" and "C" of Parcel No. One, only during fifteen days of each month, and during these fifteen days exclusively they may feed with water from the Gran Zanja, from the springs, and/or from the subsoil, any reservoir that they might build. Mrs. Elvira Olivieri Commins and/or her successors in interest may also feed said reservoir with water from the Yauco river during the seven and one-half days hereinafter mentioned in clause fifth, and put up any pump close to the said artificial lake for drawing, for the purpose of irrigation, the waters therein collected, the operation of which not being confined to a certain number of days. Mrs. Santia Olivieri and/or her successors in interest are entitled to draw by means of pumps, for the purpose of irrigation, waters from the Gran Zanja from the springs of the Guardarraya tract and/or from the subsoil, in their flat lands and in Parcel "H" of Parcel Three, without any limitation as to the number of irrigation days, and they may feed one or more of the reservoirs that they might build with water from the Gran Zanja, from the Guardarraya tract and/or from

the subsoil; without any limitation of time whatever. Mrs. Santia Olivieri and her successors in interest may also feed their reservoir or reservoirs with waters from the Yauco river during the days allotted to her, under clause fifth, and to draw, by means of pumps for irrigation purposes, the waters collected in said reservoir or reservoirs without any limitation of time whatever.

(B) Both parties agree not to obstruct without justification the flow of the waters through their respective lands in such a way as to injure the other party and they agree to keep unobstructed the main ditch known as Gran Zanja, it being understood that both parties and/or their successors in interest may on their respective lands employ plugs, dams, etc. for momentarily stopping the flow of waters and divert them towards their other land for the purpose of irrigation. Either of the parties and/or their successors in interest may in their respective land open ditches connected with the Gran Zanja for irrigation purposes through gravity.

(C) Both, the waters from the Gran Zanja and from Cupey springs, as well as those drawn from the subsoil in the lands adjudicated to Mrs. Elvira Olivieri Commins from the estate Los Indios, or those that might be dammed or collected in any reservoir built by them, cannot be diverted nor carried on any account by Mrs. Elvira Olivieri Commins and/or her successors in interest to land other than that adjudicated to her out of the Los Indios estate under the present agreement, nor thrown into the Yauco river, since it is expressly agreed that the surplus of said waters have and will continue to have their exit through the flat lands adjudicated to Mrs. Santia Olivieri Commins.

(D) Each one of the parties and/or their successors in interest are entitled to set up an irrigation pump on the 0.25-cuerda undivided parcel close to the Cupey springs with its corresponding pipes for drawing water from the above springs and/or from the subsoil, on condition that the pump which Mrs. Elvira Olivieri Commins and/or her successors in interest might set up may only be operated during the fifteen days of each month allotted under

subdivision (a) of the present clause, and that of Mrs. Santia Olivieri Commins and/or her successors in interest may be operated only on the remaining days of each month, it being agreed that such limitation shall be complied with even in the event that only one of the co-owners should install a pump on said undivided parcel. Mrs. Elvira Olivieri Commins and/or her successors in interest shall allow over their land the laying down of the pipes of the pump that Mrs. Santia Olivieri Commins and/or her successors in interest might set up on the undivided tract and shall moreover grant them the right of way for vehicles and persons traveling in the direction of these undivided parcels in their farm work over an alley four meters wide which starting from the main road leading to the estates Los Indios shall continue along the south side of the railroad track of the American Railroad Company as far as the 0.25-cuerda undivided parcel. Mrs. Santia Olivieri Commins and/or her successors in interest shall allow the laying down of the pipes for the pump which Mrs. Elvira Olivieri Commins and/or her successors in interest may set up on said parcel or of any pump to be set up on their own lands over the semiflat land adjudicated to Mrs. Santia Olivieri Commins on the north side of the road leading to the Boca barrio. The small house and pipes at present existing on said parcel belong in their entirety to Mrs. Elvira Olivieri Commins. If by mutual consent both parties decide to set up a pump for common use on the said small house, in such case both the small house and the pipes shall become jointly owned property and Mrs. Santia Olivieri Commins and Mrs. Elvira Olivieri Commins and/or their successors in interest shall mutually allow right of way for the pipes of the pump that might be installed through their respective land above mentioned in this clause. Whether either party sets up their own pump, or whether a jointly owned pump is set up, the maintenance expenses of the said alley four meters wide shall be for the account in equal shares of Mrs. Santia Olivieri Commins and Mrs. Elvira Olivieri Commins or their successors. Neither of the parties or their successors in interest

may carry the water drawn by the pump or pumps to be set up on the said parcel to lands other than those adjudicated by the present agreement of the estate Los Indios nor throw them in the Yauco river. Mrs. Elvira Olivieri Commins and/or her successors may feed with water drawn by their own pump that might be set up on said parcel any reservoir built by them on their own lands during the already mentioned fifteen days. Mrs. Santia Olivieri Commins and/or her successors shall not keep peons lodged on the aforementioned 0.25-cuerda parcel without the consent of the other party.

(E) Neither of the parties and/or their successors shall set up any irrigation pump on their respective semiflat and semihilly lands on Parcels "D" and "E" of Parcel No. One and of the first parcel of tract No. Three, that is, the land lying on the north of the railroad track of the American Railroad Company and of the road leading to the Boca barrio without the express and formal consent of the other party or successors. It is however stipulated that each of the contracting parties or their successors may set up on their respective semiflat or semihilly lands herein mentioned a wind mill or small pump exclusively for domestic use and for watering cattle. If either of the parties or their successors should purchase subsequent to this agreement semiflat or semihilly lands adjoining or close to the semiflat lands adjudicated to Mrs. Elvira Olivieri Commins in the estate Los Indios, which correspond to Parcels "C", "D" and "E" of tract No. One, such party shall not set up any irrigation pump on the lands so purchased.

(F) Mrs. Elvira Olivieri Commins and/or her successors shall be entitled to the use of the water from the Gran Zanja in that part thereof bordering on the saltpeter-land parcel adjudicated to her for the irrigation of any present or future crop planted thereon and to open ditches in the sides of the Gran Zanja on their saltpeter-land parcel for their improvement by irrigation, but they shall not divert or carry said waters outside the said parcel nor to make plugs or dams on this part of the Gran Zanja to the prejudice of any crop grown on lands of Mrs. Santia Olivieri Commins.

It is agreed that neither of the contracting parties and/or their successors in interest shall be entitled to change the present course of the Gran Zanja over the way at present occupied by it adjoining the said saltpeter-land tract, without the express consent of the other party. Mrs. Santia Olivieri Commins and/or her successors in interest may likewise use on the opposite bank the waters of the Gran Zanja and open ditches for irrigation and for the improvement of their saltpeter-land tract.

(G) Neither of the parties and/or their successors in interest may, without the express and formal consent of the other party, use, donate, assign, or sell for industrial purposes, the right to the use of the waters flowing through their respective lands adjudicated from the estate Los Indios, or of those collected in reservoirs on said lands or of those drawn from the subsoil therein or of the undivided parcels, or of those drawn from the Yauco river by means of pumps set up on such lands.

Fifth:—The steam pump set up on the 0.30-cuerda undivided parcel, as hereinbefore agreed, belongs, three parts thereof, to Mrs. Santia Olivieri Commins and one-fourth thereof to Mrs. Elvira Olivieri Commins, Mrs. Elvira Olivieri Commins and/or her successors in interest being entitled to seven and one-half irrigation days in each month for the use of the waters from the Yauco river on their lands, and Mrs. Santia Olivieri Commins and/or her successors in interest shall be entitled to the remaining days of the month. Mrs. Elvira Olivieri Commins and/or her successors in interest shall be entitled to set up a pump on the bank of the Yauco river, either on the 0.30-cuerda undivided parcel or on her own lands, for the irrigation with waters from the river of her lands, and Mrs. Santia Olivieri Commins and/or her successors in interest shall be entitled to set up one or more pumps close to the river, either on her own land or on the undivided parcel, for the same purpose but each of the parties and/or her successors in interest shall comply with the limitation as to irrigation days above mentioned. Should either party or her successors in interest request and obtain for herself an irrigation franchise

for the use of the waters from the Yauco river, such party shall observe this limitation of seven and one-half days for one of the parties and the remaining days of the month for the other party. Should both parties decide to change the operating system of the present steam pump for any other system, Mrs. Santia Olivieri Commins shall bear three-fourths of the expenses and Mrs. Elvira Olivieri Commins one-fourth thereof and each of them shall be entitled to the number of irrigation days to which she is restricted as hereinbefore in this clause. The expenses incurred for any repairs to such pump, whether driven by steam or in some other way, shall be distributed in the proportion of three-fourths to be borne by Mrs. Santia Olivieri Commins and/or her successors in interest and one-fourth thereof to be borne by Mrs. Elvira Olivieri Commins and/or her successors in interest, should the pump be used by each of the parties.

Sixth:—Under this agreement, days are understood to be natural days of twenty-four hours. The seven and one-half days per month corresponding to Mrs. Elvira Olivieri Commins and/or her successors in interest for irrigation purposes may be used either at a stretch or by dividing them into four weekly equal parts, and the fifteen monthly days to which they are entitled for drawing, on their own land and on the 0.30-cuerda parcel, water from the Gran Zanja, from the springs or from the subsoil or for feeding any reservoir, may be similarly used. The monthly irrigation days corresponding to Mrs. Santia Olivieri Commins and/or her successors in interest for drawing water from the Yauco river may be used by her either at a stretch or by dividing them in four weekly equal parts.

Seventh:—Mrs. Santia Olivieri Commins and/or her successors in interest shall permit Mrs. Elvira Olivieri Commins and/or her successors in interest the passage of vehicles, produce, persons and animals used in farming work along the pump road towards parcel "B" or vice versa, over an alley four meters wide belonging to Mrs. Santia Olivieri Commins located on the north side of

parcel "B", on condition that the only thoroughfare shall be only over that part of the alley adjoining the said parcel.

Eighth:—Mrs. Elvira Olivieri Commins and/or her successors in interest shall have access to the siding of the railroad track leading to Central Rufina and which is located within the estate Los Indios adjudicated to Mrs. Santia Olivieri Commins in order that the former may load wagons with the fruits grown upon the land adjudicated to her in connection with the parcels Nos. 1 and 2. To this effect there is established in favor of Mrs. Elvira Olivieri Commins and/or her successors in interest a permanent right of way through an alley six meters wide from the main road already named the pump road within land of parcel No. 3 adjudicated to Mrs. Santia Olivieri Commins as servient tenement, the dominant tenement being parcel number one, said alley ending at the aforesaid siding. If for any reason such siding could not be used any longer and Mrs. Santia Olivieri Commins and/or her successors in interest build upon it a track to be connected with the track of the American Railroad Company of Puerto Rico and Mrs. Elvira Olivieri Commins and/or her successors in interest wish to take advantage of it, she will be allowed to buy a one-fourth interest therein by paying Mrs. Santia Olivieri Commins and/or her successors in interest one-fourth of the cost of said track and its accessories.

Ninth:—It is herein explained that the servitude referred to in paragraph "D" of the fourth clause shall be in favor of parcel No. three as dominant tenement with respect to the 0.25-cuerda undivided parcel, as part of the dominant tenement, and parcel No. One as servient tenement.

Tenth:—Mrs. Santia Olivieri Commins within the land adjudicated to her known as Parcel No. Three, as servient tenement, constitutes in favor of parcel No. Two known as Salistrosa (saltpeter land) belonging to Mrs. Elvira Olivieri Commins or her successors in interest, as dominant tenement, a right of way consisting of a lane four meters wide which starts from the pump road, goes through the Guardarralla portion of the servient tene-

ment and ends at said Salistrosa parcel for the use of workmen's, vehicles and as the entry and exit of the farm development of the dominant tenement.

Eleventh:—Neither of the parties or their successors may, without the express consent of the other, lodge peons or help within the limits of the 0.30 cuerda undivided parcel.

Twelfth:—As the estates Juanita and Los Indios have been planted to sugar canes and lessee, Mario Mercado e Hijos, has gone on doing the same, any sugar quota that may be assigned to said estates under the Costigan-Jones Act or by the Secretary of Agriculture of the United States of America shall be divided up in equal shares for the land adjudicated to Mrs. Santia and Mrs. Elvira Olivieri Commins.

Thirteenth:—The mortgages constituting a lien upon the respective condominiums which formerly belonged to Mrs. Santia and Mrs. Elvira Olivieri Commins in the two estates which have been involved in the dissolution of the joint ownership, will continue as a lien in every respect upon the parcels respectively adjudicated to said mortgagors.

Fourteenth:—It is herein recorded, for a better understanding, that the bearings and distances of the flat portion of the "Juanita" estate, according to the plat drawn up by surveyor Juan Herminio Sanchez on December 5, 1935, are as follows:

Starting from point No. One marked with an iron post in a northern direction, 33 degrees and 56 minutes east, a distance of 20.69 meters to point No. Two, another iron post. From here towards the north, 52 degrees and "0" minutes east, a distance of 53.91 meters to point No. Three, another iron post. From here bearing north, 10 degrees with 10 minutes west, a distance of 206.96 meters to point No. Four, another iron post. From here bearing north, 76 degrees and 6 minutes east, a distance of 108.17 meters to point No. Five, another iron post. From here bearing north, 30 degrees and 57 minutes east, a distance of 32.51 meters to point No. Six, another iron post. From here bearing north, 20 degrees and 30 minutes east, a distance of 43.51 meters to point

No. Seven, a "jobo" tree. From here bearing north, 9 degrees, 21 minutes west, a distance of 52.58 meters to point No. Eight, a "tartago" tree on the edge of the road leading to Piedras Blancas. From here bearing south, 80 degrees and 17 minutes west, a distance of 307.53 meters to point No. Nine, at the edge of the aforesaid road. From here bearing south, 5 degrees and 58 minutes east, a distance of 28.39 meters, to point No. Ten, at the edge of the same road. From here bearing south, 5 degrees and 24 minutes east, a distance of 36.87 meters to point No. Eleven, at the edge of the same road. From here bearing south, 21 degrees and 13 minutes east, a distance of 38.27 meters to point No. Twelve, at the edge of the same road. From here bearing south, 11 degrees and 45 minutes east, a distance of 35.31 meters to point No. Thirteen, at the edge of the same road. From here bearing south 55 degrees and 1 minute west, a distance of 45.65 meters to point No. Fourteen, at the edge of the same road. From here bearing south, "0" degrees and 54 minutes west, a distance of 56.05 meters to point No. 15, at the edge of the same road. From here bearing south, 9 degrees and 22 minutes east, a distance of 126.35 meters to point No. Sixteen, at the edge of the same road. From here bearing south, 15 degrees and 45 minutes west, a distance of 31.31 meters to point No. Seventeen, at the edge of the same road. From here bearing south, 5 degrees 35 minutes west, a distance of 26.93 meters to point No. Eighteen, at the edge of the same road. From here bearing south, 83 degrees 54 minutes east, a distance of 29.59 meters to point No. Nineteen, an iron post. From here bearing south, 20 degrees 30 minutes west, a distance of 35 meters to point No. Twenty, an iron post at the southeast corner of the old cholera cemetery. From here bearing north, 75 degrees "0" minutes west, a distance of 16.99 meters to point No. Twenty-One, a "quenepo" tree. From here bearing south, 24 degrees 32 minutes west, a distance of 54.26 meters to point No. Twenty-Two, an avocado tree. From here bearing south, 11 degrees 34 minutes east, a distance of 108.87 meters to point No. Twenty-Three, a "moca" tree. From

here bearing south, 3 degrees 31 minutes east, a distance of 26.10 meters to point No. Twenty-Four, a stake. From here bearing south, 19 degrees 8 minutes west, a distance of 83.77 meters to point No. Twenty-Five, an iron post. From here bearing south, 23 degrees 31 minutes west, a distance of 28.12 meters to point No. Twenty-Six, another iron post. From here bearing south, 34 degrees 10 minutes west, a distance of 60.95 meters to point No. Twenty-Seven, another iron post. From here bearing south, 4 degrees 47 minutes east, a distance of 37.17 meters to point No. Twenty-Eight, another iron post. From here bearing south, 21 degrees 19 minutes west, a distance of 67.81 meters to point No. Twenty-Nine, another iron post. From here bearing south, 24 degrees 52 minutes west, a distance of 49.36 meters to point No. Thirty, another iron post. From here bearing south, 21 degrees 18 minutes west, a distance of 34.29 meters to point No. Thirty-One, another iron post. From here bearing south, 14 degrees 30 minutes east, a distance of 31.26 meters to point No. Thirty-Two, another iron post. From here bearing south, 6 degrees 58 minutes west, a distance of 51.27 meters to point No. Thirty-Three, another iron post. From here bearing south, 77 degrees 56 minutes east, a distance of 307.80 meters to point No. Thirty-Four, another iron post. From here bearing north, 19 degrees 1 minute east, a distance of 699.35 meters to point No. Thirty-Five, an iron post at the edge of the estate road, and from here bearing north, 70 degrees 15 minutes west, a distance of 253.51 meters to the starting point, that is, point No. One where the survey of the estate began, these boundaries enclosing, after deducting 2.06 cuerdas of the right of way of the American Railroad Company, a net horizontal area calculated by double longitude; 32 hectares, 13 ares, 87 centiares, 99 miliares, equivalent in insular measures to 81.77 cuerdas, which survey was made with transit and stadia.

At point No. Fourteen, at the edge of the road leading to Piedras Blancas, starts the hilly land of the Juanita estate, which hilly land is bounded on the north by land of Dr. Jose Cobian and that of the Heirs of Lugo, that of Ricardo Rodriguez, that of Jesus

Rodriguez, and that of the Heirs of Antonio Ramos; on the northwest by land of the Heirs of Antonio Ramos and that of Joaquin Diaz; on the west by land of Joaquin Diaz, that of Mrs. Herminia Morales, and the hilly land of the plantation San Rafael of the Heirs of Dona Angela and Don Dario Franceschi; on the south by land of Mario Mercado e Hijos and partly by a local road which separates land of the above people, land of Santia de la Cruz de Pacheco, a local road and land of Catalina Tirado as far as to point No. Seventeen at the edge of the road leading to Piedras Blancas, this hilly land of the Juanita estate being separated from the flat land by the road leading to Piedras Blancas on the east, the area of such hilly land measuring 378.91 cuerdas.

Fifteenth:—The parties hereto agree among themselves and request of the Registrar of Property of Ponce that on making the record in their respective names of the estates respectively adjudicated to them, in accordance with the present deed, to transcribe all and every one of the supplementary conditions of the present dissolution of joint ownership.

Sixteenth:—It is hereby explained that Mrs. Santia Olivieri Commins and/or her successors in interest may use the monthly irrigation days corresponding to the pump that might be set up on the 0.25-cuerda undivided parcel either at a stretch or distributing them in four weekly equal parts.

Seventeenth:—Mr. Narciso Ferrer Sardo, as the husband of Mrs. Santia Olivieri Commins, gives the latter his express consent concerning all the acts and agreements hereby entered into by his aforesaid spouse, and approves in every respect this deed as far as he is concerned.

Eighteenth:—It is stated by the parties herein that the partnership Mario Mercado e Hijos appears in this deed through its attorney-in-fact, Jose R. Peralta, solely and exclusively for the purpose of the consent given by said partnership as interested in the mortgage credits above mentioned to the partition of the jointly owned properties carried out therein, but that it does not bind itself by, nor is it responsible for, the stipulations contained

in the clauses of the present deed and that, as far as said partnership is concerned, any of said clauses affecting its rights as present lessees of the estates and adjoining property owners of the estate Los Indios shall be held as nonexistent.

Niheteenth:—The parties hereto Mrs. Santia Olivieri Commins and her husband Mr. Narciso Ferrer Sardo and Mrs. Elvira Olivieri Commins and Mr. Jose R. Peralta as the attorney-in-fact of Mario Mercado e Hijos fully aware of the whole contents of this deed, accept the same in all its parts and in those parts concerning them individually because the same has been drafted pursuant to a previous agreement. The parties hereto affix their signatures to all the folios on the left margin except the last folio which is signed by the parties, the witnesses and the notary.

At this stage, I, the notary, instruct the parties hereto regarding their rights and duties under the law and pertinent herein of which they are duly informed.

The parties hereto execute the present deed before the witnesses Juan Fernandez Menendez and Armando Ramirez Baez, personally known to me, of age, domiciled in Yauco and without any legal impediment to act as such.

This deed has been read by me, the notary, at one sitting and aloud to the parties and the witnesses, having waived their right to read it themselves and all and each of them fully ratify it and all of them sign with me, the notary, who certify and attest as to all the particulars set forth in this public instrument.

(Sgd.) ELVIRA OLIVIERI.
SANTIA OLIVIERI.
N. FERRER.
J. R. PERALTA.
JUAN FERNANDEZ.
ARMANDO RAMIREZ.

Signeted, Sealed, Paraphed and Signed:

Tomas Paz Y Ruiz.

There have been affixed the signatures of all the parties on the left margin of the original deed. (There are affixed five internal revenue stamps worth as follows: one, $10.00; another, $5.00; another, $3.00; another, $1.00; and another, $0.50; all of them duly cancelled.)

This is a true and faithful copy of its original No. 73 in the current protocol of public instruments, under my charge and custody, to which I refer, and at the request of the party, Mrs. Elvira Olivieri Commins, I issue the present first copy with a notice thereof on the margin of its original and in witness whereof I signet, sign, paraph and affix the notarial seal and the proper internal revenue stamps. Yauco, Puerto Rico, August 20, 1936. I Certify:—

(Sgd.) TOMAS PAZ Y RUIZ.

The signet, seal and paraph of said notary are affixed to all the folios of this deed and moreover the internal revenue stamps duly cancelled amounting to $7.90.

At the back of the last page there is affixed in the first place a $0.25 internal revenue stamp and the seal of the Registry with the legend:

"Presented at 10:00 A.M. on this day, Entry Folio 264 of Volume 185 of this district. Ponce, P.R., March 1, 1937."

The Registrar (Sgd.) Miguel Planellas.

There is stamped the seal of the Registry of Property. Underneath the $0.50 internal revenue stamp the following words appear:

"Cancelled a $0.50 internal revenue stamp. No. 1."

Further down the following handwritten notice appears:

"This instrument is recorded only as regards the following estates: Property described under No. One of First paragraph and the estates Nos. One, Two, Four and Five of the Fifth paragraph, and this is noted down on the margin of the

description of each one of said estates. The estate marked in the first place bears the following liens: a mortgage in favor of the partnership Mario Mercado e Hijos which was the subject of record No. 10, regarding one-half of this estate and another one for $41,256.89 as principal and conveyed according to record No. 12 to Mrs. Belen Gonzalez Salicrup, widow of Tous, and her children, and the lease in favor of the partnership Mario Mercado e Hijos which was the subject of record No. 11, and the properties indicated in the second place bear the following liens: lease in favor of Trujillo Mercado & Company, which was the subject of record No. 3; lease in favor of Alejandro Philip Adams, which was the subject of record No. 2; a lease mentioned in record No. 10 in favor of the partnership Mario Mercado e Hijos; and the mortgage in favor of the partnership Mario Mercado e Hijos for $41,256.89 as principal upon one-half of the estate Los Indios and another one, already mentioned, which was the subject of record No. 12, conveyed as shown by record No. 14 and the whole estate is burdened by the lease to the partnership Mario Mercado e Hijos, the subject of record No. 13. Ponce, March 9, 1937.

The Registrar: (Sgd.) Miguel Planellas."

(Internal revenue stamps worth $36.00 are affixed and cancelled.) (There is a handwritten notice which reads:

"Cancelled three $10.00 internal revenue stamps, one $5.00 internal revenue stamp and three $0.50 internal revenue stamps.) No. 5, Schedule of Fees and Political Code. Dated: *ut supra.*

(Sgd.) MIGUEL PLANELLAS."

(Stenographer's note: The fact is stated that the correlative numbers in this deed are wrong.)

On the second page on the margin of the property described under No. One. the following notice appears: "Volume 34 of

Guayanilla, back of Folio 2, Property No. 711 duplicate, Record No. 13."

On the page marked 12 and on the margin of Parcel No. One, the following notice appears: "Volume 36, Guayanilla, Folio 177, property No. 1374, Record No. 1."

On page 13 and on the margin of Parcel No. Two, the following notice appears: "Volume No. 33, Guayanilla, back of folio 204, property No. 534 triplicate, Record No. 15."

On page 14 (a), there appears on the margin of Parcel No. Four, the following notice: "Volume No. 36 of Guayanilla, back of Folio 111, estate No. 1368, Record 21."

On page 15 there appears the following notice on the margin of Parcel No. 5: "Volume No. 36 of Guayanilla, back of Folio 116, property No. 1369, Record No. 2."

The seal of the Registry of Property is duly stamped. The cover page of this deed bears the following legend:

> "TOMAS PAZ Y RUIZ. Attorney and Notary Public. Specializes in Mortgage Law. Correction of errors and defects which prevent the proper registration of instruments in the Registry of Property."

Deed No. 73. *In re:* Actual Partition of Jointly Owned Rural Estates and Other Particulars. Executed by Mrs. Elvira Olivieri Commins, Mrs. Santia Olivieri Commins and her husband Mr. Narciso Ferrer, and Mr. Jose R. Peralta, acting in his capacity as lawful attorney-in-fact of the agricultural civil partnership Mario Mercado e Hijos. August 20, 1936. In Yauco, Puerto Rico.

EXHIBIT B OF THE PLAINTIFF.

No. 40.

PARTIAL CANCELLATION OF MORTGAGE, SALE OF RURAL ESTATES AND MODIFICATION OF THE TERMS OF THE MORTGAGE.

In Mayaguez, Puerto Rico on March 9, 1937.

Before Me

Luis Lopez de Victoria attorney and notary public for Puerto Rico with my domicile and office in Yauco.

There Appear

Mrs. Elvira Olivieri Y Commins, of age, single by reason of divorce, property owner and domiciled in Mayaguez, Puerto Rico, and the spouses Mr. Manuel Francisco Lluberas Pasarell and Mrs. Hazel Kells Lluberas, of age, property owners, domiciled in Yauco, who appear on their own right and Mr. Manuel Francisco Lluberas Pasarell appears moreover as attorney-in-fact of the following parties:

Mrs. Antonia Lluberas Pasarell, of age, property owner, domiciled in New York, State of New York, United States of America, widow of Dr. Carlos G. Armstrong; Miss Rosa Elena Lluberas Pasarell, of age, property owner, single and domiciled in the City of New York, State of New York, United States of America; Mrs. Graciela Lluberas Pasarell, of age, property owner, domiciled in the City of New York, State of New York, United States of America, married to Mr. Antonio Valanti Mestre; Mrs. Celia Lluberas Pasarell, of age, property owner, domiciled in Ponce, Puerto Rico, married to Mr. Emilio Blasini Totti; and Miss Raquel Lluberas Pasarell, of age, single, property owner, domiciled in New York, State of New York, United States of America.

I Certify to my personal knowledge of the appearing parties and to the truth of their statements as to being of age, as to their civil status, as to their professions and domiciles. They assert to have, and in my opinion they have, the legal qualifications neces-

sary for the execution of the present deed, and by virtue whereof, Mrs. Elvira Olivieri Commins—

States

First:—that she owns the following personal property:—

No. One: Rural Estate:—A parcel of land containing 79.46 cuerdas, equivalent to 31 hectares, 23 ares, 8 centiares, 79 miliares, lying in the Indios barrio within the municipal district of Guayanilla, which are subdivided in the following parcels: Parcel "A" with an area of 41.26 cuerdas known by the name of Cupey of flat land planted to sugar canes; Parcel "B" containing 4 cuerdas of flat land, planted to sugar canes; Parcel "C" having 20.52 cuerdas of semiflat land at present planted to lesser crops; Parcel "D" containing 1.68 cuerdas of semiflat land planted to lesser crops; and Parcel "E" containing 12 cuerdas of semiflat land planted to lesser crops. The whole tract is bounded as follows: on the north by land of Santia Olivieri, the track of the American Railroad Company and from the west angle of Parcel "D" by the municipal road leading from Guayanilla to the Boca barrio; on the south by land of Arturo Lluberas and nephews, by the Yauco river, by a 0.30-cuerda undivided parcel containing the pump and belonging to Santia and Elvira Olivieri Commins, and with land of Santia and Elvira Olivieri Commins; on the east by land of Santia Olivieri, and on the west by land of Mariano Lugo, by land of Ramon Ramirez, and by an old road which divided land of Ramon Lluberas, Luis Cervoni, Dolores Lopez and land of Luis Cervoni and on the southwest, land of Arturo Lluberas and nephews. The fact is recorded that all along the east side there is a road belonging to Santia and Elvira Olivieri, 6 meters wide, which proceeds along the west side of Parcel "B" as far as the undivided 0.30-cuerda parcel where the irrigation pump stands. Within this tract, but enclosed by said Parcel "C" there is a small parcel of land jointly owned by Santia and Elvira Olivieri with an area of 0.25 cuerda and there is built thereon a small house with a concrete foundation for a pump. And it is hereby ex-

plained that the aforesaid parcels marked letters "E" and "D" are separated, the former, partly on its east side, by the road leading from Guayanilla to Boca barrio and the latter by the railroad track, both in connection with Parcel "C", and the former is also separated in connection with the latter by the said railroad track.

No. Two: A Portion of Parcel of Saltpeter Land lying in the Indios barrio of the municipal district of Guayanilla and bounded: on the north by land of Mario Mercado e Hijos; on the south by a cano within the land of Santia Olivieri; on the east by the Caribbean Sea and on the west by a 6-meter wide road, three meters of which is part of this parcel and the other three meters part of the parcel of land belonging to Santia Olivieri. Its area is 41.99 cuerdas, equivalent to 16 hectares, 50 ares, 37 centiares and 7 miliares of saltpeter land.

No. Three: A $50.00 undivided half interest in the following $100.00-worth parcel: Undivided parcel of land with an area of 0.30 cuerda, equivalent to 11 ares, 79 centiares and 12 miliares with a small house thereon, fenced and roofed with galvanized-iron, with a steam pump with every accessory and pipes for pumping water from the Yauco river for the irrigation of the estates belonging to Santia and Elvira Olivieri, situated in the Indios barrio of the municipal district of Guayanilla and bounded as follows: on the north by land belonging to Elvira Olivieri Commins; on the south by the Yauco river; on the east by land belonging to Santia Olivieri Commins.

No. Four: A $50.00 undivided half interest in the following $100.00-worth parcel: Rural: an undivided parcel of land measuring 0.25 cuerda, equivalent to 9 ares, 82 centiares and 60 miliares, possibly destined to have installed thereon a pump for drawing water from adjacent springs, with a cement foundation with a small house roofed and fenced with galvanized iron and pipes. This parcel of land is situated in the Indios barrio of the municipal district of Guayanilla and bounded as follows: on the north, west and east by Parcel "C" of the estate belonging to Elvira

Olivieri Commins; and on the south by Parcel "A" known as Cupey from the same estate of Elvira Olivieri Commins.

No. Five: Rural:—An estate known as Juanita lying in the Pueblo and Quebrada barrios of the municipal district of Guayanilla, with an area of 81.77 cuerdas of flat land applied to sugar canes and 378.91 cuerdas of wood and pasture land, and a water pump for irrigating said canes and a frame house with the galvanized-iron roof in poor condition. It is bounded on the north by land of the Heirs of Antonio Ramos, of Jesus Rodriguez, of Ricardo Rodriguez, of Dr. Jose Çobian, and of the Heirs of Lugo and a municipal road separating land partly of Mario Mercado e Hijos; on the south by land of Mario Mercado e Hijos and partly by a municipal road separating land of said concern, by land of Santia de la Cruz de Pacheco, of Catalina Tirado and of Mario Mercado e Hijos; on the east by land of the aforesaid Mario Mercado e Hijos; on the northwest by land of the Heirs of Antonio Ramos and of Joaquin Diaz; and on the west by land of Joaquin Diaz, of Herminia Morales, and the woodland of the San Rafael plantation, of the Heirs of Angela and Dario Franceschi; on the southwest by land of Mario Mercado e Hijos. This estate is crossed from south to the northwest by the tracks of the American Railroad Company of Puerto Rico. Its area is 460.68 cuerdas equivalent to 181 hectares, 6 ares and 57 centiares.

Second: Said Elvira Olivieri Commins acquired the above immovables by reason of the actual partition of rural estates as set forth in deed No. 73, executed on August 20, 1936, in Yauco, before notary Tomas Paz y Ruiz.

Liens

Third:—The only lien encumbering the above immovables is a voluntary first mortgage constituted by deed No. 30, executed in Mayaguez, before me, on February 25, 1937, the amount of such mortgage being $45,000.00 as principal and upon the terms, conditions, distribution of liability and other details set forth in the

aforesaid deed, such mortgage being executed in favor of Mr. Manuel Francisco Lluberas who appears herein.

Partial Cancellation

Fourth:—Mr. Manuel Francisco Lluberas Pasarell acknowledges that on this day and prior to the present cancellation, Mrs. Elvira Olivieri Commins has paid to him on account of the principal of the aforesaid mortgage, the sum of $40,000.00; said Manuel Francisco Lluberas Pasarell having relieved the mortgagor from the payment of interest on said $40,000.00. This payment of $40,000.00 constitutes a release of the liability encumbering the immovables described in said mortgage described under Nos, 1, 2, 3, and 4 of the first paragraph of this deed. By virtue whereof, Mr. Manuel Francisco Lluberas Pasarell, with the express consent of his wife, Mrs. Hazel Kells Lluberas, partially cancels the aforesaid mortgage as to the $40,000.00 received, the interest thereon having been waived, relieving of any lien the aforesaid immovables described under Nos. 1, 2, 3 and 4 of the first paragraph of this deed.

The mortgage is left standing as to the $5,000.00 encumbering the rural estate described under No. 5 of the first paragraph of this deed; and the terms, rate of interest on said mortgage, shall be modified hereinafter.

Sale

Fifth:—Mrs. Elvira Olivieri Commins hereby sells absolutely, free of liens and encumbrances, without any reservation, to Mr. Manuel Francisco, Dona Antonia, Dona Rosa Elena, Dona Graciela, Dona Celia and Dona Raquel Lluberas Pasarell, the immovables described under Nos. 1, 2, 3 and 4 of the first paragraph of this deed, that is, the whole of the immovable described under No. 1, the whole of the immovable described under No. 2, one undivided half interest of the immovable described under No. 3, that is, all the condominium had in said immovable by the vendor; and the undivided half interest in the immovable described under No. 4, that is, all the condominium had in said immovable by the

vendor; all of which I described in the first paragraph of this deed.

The consideration of this sale is the lump sum of $40,000.00. This sum is acknowledged to have been received by Mrs. Elvira Olivieri Commins from the purchasers, before now and to her entire satisfaction, for which sum she gives the purchasers the proper release and acquittance.

Sixth:—The purchase price is distributed among the immovables sold as follows:

$35,000.00 for immovable No. 1.

$1,000.00 for immovable No. 2.

$2,000.00 for immovable No. 3, that is, the condominium.

$2,000.00 for the condominium described under No. 4.

Seventh:—The purchasers acquire, each of them, an undivided jointly owned equal interest in the immovables and condominiums involved in this contract.

Eighth: This sale covers all the rights, uses, servitudes, interest in the irrigation pump and accessories and everything else included in said estates and rights pertaining thereto.

Regarding Possession

Ninth:—As there exists a lease in favor of Mario Mercado e Hijos as regards the estates sold, which lease expires on June 2, 1937, the purchasers herein will take actual possession of the said estates in accordance with the clauses of the said lease, which lease was constituted by deed No. 50, executed in Ponce, on April 5, 1927, before notary Francisco Parra Capo, and Mrs. Elvira Olivieri Commins will take every step so that at the expiration of such lease, delivery thereof shall take place normally; but should Mrs. Elvira Olivieri Commins meet with difficulties to take actual possession of the estates above described from their lessees, such circumstances shall be considered as *force majeure* and she will not be liable at all for any delay incurred in delivering possession without her fault or negligence.

Modification of Mortgage Terms

Tenth:—By virtue of the partial cancellation made in this deed, the mortgage constituted in deed No. 30, executed before me on February 25, 1937, has remained in force only for $5,000.00 as principal, affecting the estate described under No. 5 of the first paragraph of this deed, which estate is called Juanita. Mr. Manuel Francisco Lluberas Pasarell, with the express consent of his wife Mrs. Hazel Kells Lluberas, agrees with Mrs. Elvira Olivieri Commins to modify the terms of such mortgage, which modification is carried out under the following clauses and terms:

A.—The mortgage still subsists as regards the estate Juanita for $5,000.00.

B.—The interest on such mortgage is reduced to 6% annually, such interest to begin to accrue as from February 25, 1937, until the debt is fully and finally paid, said interest to be paid annually at the expiration of each year.

C.—Said mortgage shall be extended for five years, which counted from the 25th of February, 1937, shall expire on the 25th of February, 1942.

D.—The mortgage lien upon said estate Juanita shall subsist, not only as regards the principal, but also, as regards the interest on said principal at the stipulated rate of 6% annually, as well as for the additional sum of $200.00 for disbursements, costs and attorney's fees in case of foreclosure.

Eleventh:—Mrs. Elvira Olivieri Commins and Mr. Manuel Francisco Lluberas Pasarell state that the power of attorney executed by the former to the latter, and the resolutory conditions contained in deed No. 30, executed before me on February 25, 1937, were duly performed by Mr. Manuel Francisco Lluberas Pasarell, who effected the payment and secured the cancellation of the mortgage constituted by deed No. 13 of March 23, 1932, executed before notary Fernando Zapater Martinez, acting in the place of his colleague Jose Tous Soto, which mortgage credit was subsequently conveyed to Belen Gonzalez Salicrup, widow of Tous Soto and children, as per deed No. 33 of May 9, 1933, executed

before notary Fernando Zapater Martinez, said mortgage having been effected by deed No. 47, executed in Ponce, Puerto Rico, on March 8, 1937, before notary Fernando Zapater Martinez.

Twelfth:—All the parties hereto in their respective capacities approve the present deed in every respect.

I, the notary, instructed the parties hereto regarding their rights and duties under the law and pertinent herein of which they are informed.

The parties hereto execute the present deed before the witnesses, Attorney Jose Sabater and Mr. Eduardo Muller, personally known to me, of age, domiciled in Mayaguez and without any legal impediment to act as such.

The parties hereto having been informed of their rights under the law to read this deed themselves, of which right they avail themselves, ratify its contents and sign together with the witnesses, the parties hereto having affixed their initials to the other folios of this deed, in accordance with law.

To All of Which, I, the Notary, Do Hereby Certify.

It is herein set forth by the parties: That Mrs. Elvira Olivieri Commins reserves to herself the right to effect the total payment of the mortgage on the estate Juanita or partial payments on account thereof at any time even before its maturity.

(Sgd.) ELVIRA OLIVIERI.
M. FRANCISCO LLUBERAS.
HAZEL K. LLUBERAS.
JOSE SABATER.
EDUARDO MULLER.

(Signed, signeted, sealed and paraphed):

Luis Lopez de Victoria.

There are affixed to the original and cancelled the proper internal revenue stamps.

This is a true and faithful copy of its original, which is deed No. 40, executed in Mayaguez, Puerto Rico, before me on March 9, 1937, on file in my protocol of public instruments to which I

refer. At the request of Mr. Manuel Francisco Lluberas Pasarell, I issue this copy the same day of the execution of its original, having made a note of this issuance.

(Sgd.) Luis Lopez de Victoria.

All the pages are signeted, sealed and paraphed by said notary. There are affixed thereto and cancelled internal revenue stamps worth $8.80.

(The following legend appears on the back of the last page: "Cancelled a $0.50 stamp.") A rubber stamp has been stamped reading as follows: "Presented at 2:30 P.M. for entry on folio 32 of Volume 186 of this district. Ponce, Puerto Rico, March 10, 1937.

The Registrar (Sgd.) Miguel Planellas."

(The seal of the Registry of Property is stamped.)

Further down the following handwritten statement appears:

"This instrument has been recorded only as regards the sale and the modification of the mortgage, with a description on the margin of each one of the estates referred therein. The estates described under Nos. from One to Four are encumbered by the following liens: lease in favor of Alejandro Philip y Adams which gave rise to record 2; lease in favor of Trujillo Mercado & Compania which gave rise to record 3; lease mentioned in record 10 in favor of the partnership Mario Mercado e Hijos; and lease in favor of the partnership Mario Mercado e Hijos which gave rise to record 3. Ponce, March 23, 1937.

The Registrar (Sgd.) Miguel Planellas."

There are cancelled internal revenue stamps worth $87.50

(Further down the following appears: "'Cancelled one $50.00 stamp, three $10.00, one $5.00, two $1.00 and one $0.50. No. 5 Schedule of Fees and Political Code. Dated: *ut supra.*

(Sgd.) Miguel Planellas.")

The cover page of this deed bears the following legend: "Luis Lopez de Victoria, Attorney and Notary Public. Box 114. Telephone 47. Copy of Deed No. 40. Partial Cancellation of Mortgage, Sale of Rural Estates and Modification of Mortgage Terms. Executed by Mrs. Elvira Olivieri Commins and the spouses Mr. Manuel Francisco Lluberas Pasarell and Mrs. Hazel Kells Lluberas. March 9, 1937. Mayaguez, Puerto Rico."

Note: On page 2 and on the margin of the estate described under No. One, the following note appears: "Volume 36 of Guayanilla, back of folio 179, estate No. 1374, record 2."

On page 5, on the margin of the estate described under No. Two, the following note appears: "Volume 36 of Guayanilla, folio 189, estate No. 534, quadruplicate, record 17."

On the margin of the estate described under No. Three, the following note appears: "Volume 36 of Guayanilla, back of folio 112, estate No. 1368, record 3."

On the margin of estate described under No. Four, the following note appears: "Volume 36 of Guayanilla, back of folio 117, estate No. 1369, record 3."

On the margin of the estate described under No. Five, page 7, the following note appears: "Modification. Volume 36 of Guayanilla, folio 166, estate No. 711 triplicate, record 15."

The seal of the Registry is stamped on all its pages.

EXHIBIT C OF THE PLAINTIFF.

No. 10

In the city of Ponce, Island of Puerto Rico, on the 7th day of the month of July, 1935,—

Before Me

Benigno Fernandez Garcia, Attorney and Notary public for this Island with my office in the city of San Juan,—

They Appear

Mr. Mario Mercado y Montalvo, of age, a widower, property owner and domiciled in Ponce, Puerto Rico;

The Spouses Mrs. Margarita Mercado Y Riera and Mr. Salvador S. Mandry Y Espinosa, both of age, property owners, domiciled in Ponce, Puerto Rico;

The Spouses Mr. Mario Mercado Y Riera and Mrs. Maria Luisa Parra Capo, both of age, property owners, domiciled in Ponce, Puerto Rico;

And Mr. Ramon Ramos Casellas, of age, a civil engineer and domiciled in San Juan, Puerto Rico, acting in the name and representation of Mr. Adrian Mercado Y Riera, of age, single, property owner and domiciled in Ponce, Puerto Rico, temporarily residing in the City of Rome, Italy, who has given him the power of attorney No. 141, executed in the city of Ponce, Puerto Rico, on August 23, 1926, before notary public Francisco Parra Capo, wherein he has been clothed with sufficient powers for executing the present instrument, which he will prove whenever necessary. Mr. Ramos Casellas asserts that such power has neither been revoked nor restricted in any way.

I Hereby Certify to my knowledge of the parties hereto, who assure me to possess, and in my opinion they possess, the necessary legal qualifications to execute the present deed of renewal of partnership, and to that effect state:

First:—That by deed No. 36, executed in the city of Ponce, Puerto Rico, on June 13, 1916, before notary Antonio F. Castro, Mr. Mario Mercado y Montalvo and his wife Mrs. Eufemia Riera y Dubocq, Mr. Mario Mercado y Riera and his wife Mrs. Maria Luisa Parra Capo, Mr. Salvador S. Mandry and his wife Mrs. Margarita Mercado y Riera, Mr. Germanico S. Belaval and his wife Mrs. Maria Luisa Mercado y Riera and Mr. Adrian Mercado y Riera, set up an agricultural civil partnership to trade under the name of "Mario Mercado e Hijos", with its domicile in the city of Ponce, Puerto Rico, and for the period of Five Years, to expire on June 15, 1921, which was renewed by tacit consent of all the partners for a further period of Five Years which expired on June 15, 1936.

Second:—That Mrs. Eufemia Riera y Dubocq, married to Mario

Mercado y Montalvo, died in the city of Ponce on June 22, 1919, the partnership having been continued between the surviving spouse and the other partners.

Third:—That by deed No. 99, executed in the city of Ponce, on June 11, 1926, before notary public Jose Tous Soto, Mrs. Maria Luisa Mercado y Riera, through her attorney-in-fact, that is, her spouse, Germanico S. Belaval, granted, sold and conveyed to Mr. Mario Mercado y Montalvo such rights, actions and interests to which she was entitled in her own right as partner of the partnership "Mario Mercado e Hijos", and she also sold, granted, waived and conveyed to Mr. Mario Mercado y Montalvo, by the same deed, her interest in the partnership "Mario Mercado e Hijos" which had come to her as an inheritance from her deceased mother Mrs. Eufemia Riera y Dubocq.

Fourth:—That by the above deed No. 99, executed in the city of Ponce on June 11, 1926, before notary Jose Tous Soto, Mr. Mario Mercado y Montalvo, Mr. Mario Mercado y Riera, with the express consent of his wife Mrs. Maria Luisa Parra Capo, Mrs. Margarita Mercado y Riera, with the express consent of her husband Mr. Salvador S. Mandry y Espinosa and Mr. Adrian Mercado y Riera, extended the time of the partnership "Mario Mercado e Hijos" constituted by deed No. 36, of June 13, 1916, executed before notary public Antonio F. Castro, for a further period of five years, beginning on June 15, 1926, containing the same clauses and terms stipulated in the said deed of constitution of partnership, including clause four relative to the extension of the five-year period to a further period of five years, and with the modifications set forth in said deed of extension; and that the terms of said partnership has been extended by tacit agreement of all the parties up to June 15, 1936.

Fifth:—That the partners have again agreed to extend the life of the partnership "Mario Mercado e Hijos" with the same clauses and terms set forth in the deeds of constitution of partnership and extension of partnership above mentioned which they carry out by means of the present deed with the following clauses:

First:—Mr. Mario Mercado y Montalvo, Mrs. Margarita Mercado y Riera, with the express consent of her husband, Mr. Salvador S. Mandry y Espinosa, Mr. Mario Mercado y Riera, with the express consent of his wife, Mrs. Maria Luisa Parra Capo, and Mr. Ramon Ramos Casellas, in the name and representation, as attorney-in-fact of Mr. Adrian Mercado y Riera, do hereby extend the life of the partnership "Mario Mercado e Hijos", constituted by deed executed in the city of Ponce Puerto Rico, under No. 36, on June 13, 1916, before notary public Mr. Antonio F. Castro, and renewed and modified by deed No. 99, executed in the same city of Ponce, on June 11, 1926, before notary public Jose Tous Soto, for a further period of fifty years which shall begin to be counted from June 15, 1936, to expire therefore on June 15, 1986, keeping with their full force and effect, without any change or modification, each and all of the clauses and terms set down in the deeds of partnership and extension of partnership.

The parties hereto approve this deed just as the same is drafted and, I, the notary, warn them as to their rights and duties under the law.

The parties hereto execute the present deed before the witnesses Mr. Manuel de la Pila and Mr. Hilarion Perez Guerra personally known to me, of age, domiciled in this city and without any legal impediment to act as such.

This deed has been read by me, the notary, to the parties and witnesses hereto and the same is signed by all of them without objection; and as to its contents and the personal characteristics of the parties, according to their statements, I, the notary, do hereby certify.

(Sgd.) MARIO MERCADO.
MARIO MERCADO, Jr.
MARGARITA MERCADO RIERA.
SALVADOR S. MANDRY.
MARIA L. PARRA DE MERCADO.
R. RAMOS CASELLAS.
MANUEL DE LA PILA.
H. PEREZ GUERRA.

Signeted, signed, paraphed and sealed,

B. FERNANDEZ GARCIA.

There are affixed hereto and cancelled the proper internal revenue stamps as well as my notarial seal.

It is a true and faithful copy of its original which, under the above number, is on file in my protocol of public instruments of the current year to which I refer.

At the request of the partnership "Mario Mercado e Hijos" I issue for it this copy on six sheets of paper of those used by me, typewritten on one face only, a note thereof being recorded on the original, and I signet, sign, paraph and seal the same in the city of San Juan, Puerto Rico, on this day, the 29th of July, 1935.

(Sgd.) B. Fernandez Garcia.

Signeted, sealed and paraphed by B. Fernandez Garcia.

There is affixed hereto a $0.50 internal revenue stamp duly cancelled, as well as the notarial seal of the undersigned notary on every page with his paraph.

The cover bears the following legend:

"B. Fernandez Garcia—Attorney and Notary Public—No. 10—Deed of Renewal of Partnership—Executed—Mr. Mario Mercado Montalvo; The Spouses Mr. Mario Mercado Y Riera and Mrs. Maria Luisa Parra Capo; The Spouses Mrs. Margarita Mercado Y Riera and Mr. Salvador S. Mandry, and Mr. Ramon Ramos Casellas, as attorney-in-fact of Mr. Adrian Mercado Y Riera. July 7, 1935. Ponce, Puerto Rico.

EXHIBIT D OF THE PLAINTIFF:

Pedro M. Porrata—Attorney and Notary Public—Box 1224—Telephone 859—Ponce, P. R.

January 9, 1938.

Hon. Registrar of Property of Ponce, Ponce, Puerto Rico.

Dear Sir:—

In behalf of the partnership Mario Mercado e Hijos I apply to

you as the registrar of property of this district for a certified literal copy of the entry of deed No. 13, of March 23, 1932, executed before notary Fernando Zapater Martinez, acting in the place of Jose Tous Soto, which is a mortgage deed constituted by Mrs. Elvira Olivieri Commins in favor of Mr. Mario Mercado Montalvo upon the estate Indios of Guayanilla.

Said deed appears of record on the back of folio 152 of Volume 33 of Guayanilla.

Yours truly,

(Sgd.) PEDRO M. PORRATA.

PMP:asc

R. 540. Aug. 2, 1935—10,000. Department of Justice of Puerto Rico—Registry of Property—Ponce, Puerto Rico.

Miguel Planellas Yanez, Registrar of Property of Ponce, Puerto Rico, and its Mortgage District, Do Hereby Certify:

1.—That record No. 12 (a), of estate 534, duplicate, entered on the back of folio 152 of Volume 33 of Guayanilla referred to in the foregoing application, literally copied, reads as follows:

12 (a).—Rural: Described in the foregoing record tenth the same as in the instrument. This estate is encumbered by a lease in favor of Mr. Alejandro Philips Adams, which matured on June 1, 1912, which gave rise to the previous second record; by a lease in favor of Trujillo Mercado & Company, which matured on June 2, 1922 and gave rise to record 3; by a lease in favor of Mario Mercado e Hijos, mentioned in the preceding record tenth. The interest therein belonging to Mrs. Santia Olivieri Commins is encumbered by a mortgage in favor of Mario Mercado e Hijos, conveyed to Eufrosina Cianchini which gave rise to record tenth and eleventh. Mrs. Elvira Olivieri Commins, of age, single by reason of divorce, property owner, domiciled in Yauco, acquired by inheritance an undivided half interest in this estate, as appears from record four. By deed No. 13, executed in Mayaguez, Puerto Rico, on March 23, 1932, before notary public Fernando Zapater Martinez, Mrs. Elvira Olivieri Commins acknowledges to

be indebted to the partnership Mario Mercado e Hijos in the sum of $41,256.89, by reason of a current account with liquidated interests until March 23, 1932, and in payment of the aforesaid sum owed by her to the said partnership Mario Mercado e Hijos, she executed, granted and delivered to said partnership, through its attorney-in-fact, Mr. Arturo Cortes Valls, of age, married, an employee and domiciled in Guayanilla, four promissory notes payable to bearer by indorsements, to become due all of them on March 23, 1939, and subscribed by said lady for the following sums: No. One, for $10,000 as principal, plus $2,700 for interest thereon and $500 for costs; No. Two, for $10,000.00 as principal, plus $2,700 for interest and $500.00 for costs; No. Three, for $10,000.00 as principal, plus $2,700.00 for interest and $500.00 for costs; and No. Four, for $11,256.89 as principal, plus $3,000.00 for interest and $500.00 for costs. Said Mrs. Elvira Olivieri Commins constitutes a voluntary mortgage on her condominium in this estate, which is mentioned on the margin, as security for all and each of the aforesaid promissory notes, which mortgage will secure, in addition to the principal of the aforesaid notes, the sum of $11,100.00 for interest and $2,000.00 for costs, expenses, disbursements and attorney's fees in case of judicial recovery and demandable, as a penalty, should the above happen, without the necessity of a liquidation. Mrs. Elvira Olivieri Commins and Mr. Arturo Cortes Valls, in behalf of the partnership Mario Mercado e Hijos, appraise, with a waiver of any new assessment or action for that purpose, the mortgaged condominiums as follows: the condominium affecting this estate at $50,000.00; and the condominium of the estates on the margin at $25,000.00. Mrs. Elvira Olivieri Commins agrees with the partnership Mario Mercado e Hijos that out of the rentals to which she is entitled, under the contract of lease referred to at the end of the item of liens in this entry, *viz.*, the sum of $4,100.00, said partnership will retain, to be applied to the payment of the accrued interest, the sum required to cover the same, said retention to begin on June 2, 1932, and so on every time the same becomes

due, that is, on March 4 and June 2 of each year. It is stipulated that should three instalments of interest become due and left unpaid, the mortgagor shall forfeit the right to avail herself of the term agreed upon for the payment of the principal and the mortgagee may proceed to the judicial recovery of all or anyone of the promissory notes, either by summary proceedings or by means of an ordinary action. If, at the expiration of the contract of lease above referred to, said promissory notes should not have been paid, the mortgagor, her assigns or successors in interest, bind themselves to impose upon any lessee the obligation to retain from any rentals agreed upon, the sums required for the payment of the interest due to Mario Mercado e Hijos and to effect such payment to said partnership, for the account of the mortgagor, as stipulated in clause 4 of the deed referred to. Notwithstanding the stipulation contained in the foregoing clause, the mortgagor, as part of the consideration of this contract, agrees with the partnership Mario Mercado e Hijos, so long as the mortgage credit hereby constituted is not paid, to grant it priority for the purchase or lease of her condominiums in the estate recorded under this number and which is mentioned on the margin thereof. For this purpose the mortgagor shall advise, so long as the mortgage credit is not satisfied, by registered letter to Mario Mercado e Hijos, of any proposal to purchase or lease that might be made and said partnership shall be allowed a period of thirty days for accepting or refusing such proposal and during that time the mortgagor shall not sell or lease to anybody else. In the event of sale or lease in violation of this agreement, Mario Mercado e Hijos shall be entitled to enforce its right of redemption against the purchaser or lessee, which right it may exercise within thirty days from the record of the sale or lease in order to subrogate itself to the place, degree and priority of the purchaser or lessee. Mrs. Elvira Olivieri Commins states that no homestead right has been constituted upon any of the mortgaged estates, but if in the future any such right in her favor should be constituted, she waives such right from now on and for all time in favor of

the partnership Mario Mercado e Hijos, its assigns, successors in interest, in consideration of the present contract during the life thereof. The parties agree that the mortgagor may pay at any time before maturity the obligation herein constituted or to pay it on account thereof any sum of money not below $5,000.00, provided, notice is served on the mortgagee three months prior to the date when she intends to pay the principal of such mortgage, or a partial payment on account. The parties, likewise, expressly set forth that the lessor has been paid all the rentals pertaining to the estates accrued up to the date of the deed to which I refer, and that, upon the execution thereof, she was paid by means of a check, the sum of $1,500.00 upon the Banco de Ponce, in payment of the annual instalment which became due on the month of March, *ultimo*. The parties, likewise, agree that the actual partition of such estates shall not be carried out without the consent of Mario Mercado e Hijos as long as the mortgage constituted by the deed to which I refer remains in force. For the purpose of the registry, the mortgage lien is distributed in such a way that the condominium in this estate shall be liable for the sum of $28,877.81 as principal, plus $1,400.00 for costs, expenses and attorney's fees, besides $7,770.00 for interest. By virtue whereof, the agricultural civil partnership, Mario Mercado e Hijos, domiciled in Guayanilla, constituted by deed No. 36, dated June 13, 1916, and executed before notary Antonio F. Castro, and modified and extended by deed No. 99, of June 11, 1926, executed before notary Jose Tous Soto, registers its mortgage lien upon the undivided half interest in this estate of Elvira Olivieri Commins. The aforesaid appears from the registry and from the aforementioned mortgage deed, a first copy of which was presented in this office at 3:30 P.M., on the 4th of the current month of August according to entry No. 59 of Volume 160 of the daybook. It is set down that the said mortgage lien is recorded in favor of the partnership Maria Mercado e Hijos, or of the holder or holders by indorsement of the said notice. The deeds of constitution and extension of partnership and the power of attorney No. 39, exe-

cuted before Jose Tous Soto on February 16, 1927, evidencing the capacity in which Arturo Cortes Valls is acting, are described in the eleventh record of this estate. The fact is noted that in checking this entry it is noticed that they failed to state that the principal on said promissory notes shall draw interest at 9% annually until fully paid and payable semi-annually at the end of each semester. As the foregoing tallies with the registry and the instrument presented, I sign this paper in Ponce, on August 12, 1932. Fees $24.00, No. 5 Schedule of Fees.

(Sgd.) MIGUEL PLANELLAS."

There are two notices on the margin reading as follows: "The other estate is the one recorded on the back of folio 22 of Volume 16 of Guayanilla, Estate No. 711, Tenth record, Ponce, August 12, 1932. Planellas.". There is another notice reading as follows: "The mortgage which gave rise to the interested record twelfth has been conveyed according to the subsequent record fourteenth. Ponce, May 16, 1933."

2. The record of said mortgage upon the other estate referred to in the first marginal note, and which was made on the back of folio 22 of Volume 16 of Guayanilla, Estate No. 711, literally transcribed reads as follows:

> "10th. Rural: called Juanita, lying in the Pueblo and Quebrada barrios of the municipal district of Guayanilla, whose description appears in the first record as well as in the instrument presented. There are no liens on it. And on the first record it is set down that there is constituted in favor of one of the parcels making up the parcel under this number a servitude of right of way. Mrs. Elvira Olivieri Commins, single on account of divorce and Mrs. Santia Olivieri Commins, married to Mr. Narciso Ferrer y Sardo, all of them of age, property owners and domiciled in Yauco, acquired the estate under this number as shown by records first, sixth and seventh, because although it is true that subsequently this estate was actually partitioned as stated in the foregoing

record ninth, such partition was cancelled according to the deed which gave rise to the note on the margin of that record. In the instrument the subject-matter of this entry, Mrs. Elvira Olivieri Commins, assuming the ownership of the undivided half interest therein, acknowledges to owe the partnership Mario Mercado e Hijos the sum of $41,256.89, arising from a current account with liquidated interest up to March 23, 1932, and in payment thereof she issued, executed and delivered to the partnership Mario Mercado e Hijos, represented in such execution by its attorney-in-fact, Arturo Cortes Valls, four promissory notes in favor of the holder by indorsement, to mature all of them on March 23, 1939, for the following amounts: Note No. 1 for $10,000.00 as principal plus $2,700.00 for interest and $500.00 for costs; Note No. 2 for $10,000.00 as principal, plus $2,700.00 for interest and $500.00 for costs; Note No. 3 for $10,000.00 as principal, plus $2,700.00 for interest and $500.00 for costs, and Note No. 4 for $11,256.89 as principal, plus $3,000.00 for interest and $500.00 for costs, the principal of each of the aforesaid notes to bear interest at 9% annually, payable in semi-annually installments at the end of each semester. Said Mrs. Elvira Olivieri Commins constitutes a voluntary mortgage upon her condominiums in this estate, which mortgage is referred to on the margin, a security for all and each of the aforesaid notes, which mortgage shall secure, besides the principal of the aforesaid notes, $11,000.00 for interest and $2,000.00 for costs, expenses, disbursements and attorney's fees in case of judicial recovery as appears from deed No. 13, executed in Mayaguez on March 23, 1932, before notary of Ponce, Fernando Zapater Martinez, which has been recited at length in the twelfth record of estate No. 534 duplicate, on the back of folio 152 of Volume 33 of Guayanilla. The aforesaid condominium in this estate, which has been appraised at $25,000.00, shall secure $12,379.08 as principal, $3,330.00 as interest thereon and $600.00 for costs.

By virtue whereof, the agricultural civil partnership Mario Mercado e Hijos or the holder or holders of the aforesaid promissory notes record their mortgage right upon the condominium held by Elvira Olivieri in this estate. Ponce, August 12, 1932. Fees $15.00, No. 5 of the Schedule of Fees.

(Sgd.) Planellas."

There is a note on the margin reading as follows: "The other estate is Estate No. 534 duplicate, on the back of folio 152 of Volume 33 of Guayanilla. Ponce, August 12, 1932. Planellas."

3.—That no further particulars are certified to because it is not so requested by the interested party and in order to record such fact and at the request of attorney Pedro M. Porrata, attorney for Mario Mercado e Hijos, I issue this certificate in Ponce, Puerto Rico, on January 13, 1938.

(Sgd.) MIGUEL PLANELLAS.

(Miguel Planellas Yanez, Registrar of Property of Ponce, Puerto Rico.)

There have been affixed hereto and cancelled one $3.00, one $1.00 and two ten-cent internal revenue stamps. The following handwritten notice also appears: "There have been affixed hereto and cancelled one $3.00, one $1.00 and two ten-cent internal revenue stamps. No. 6 of the Schedule of Fees. Ponce, Puerto Rico, January 13, 1938.

(Sgd.) Miguel Planellas."

There is a cover page with the following legend: "R. 167. July 10, 1935—2,000. Department of Justice of Puerto Rico. Registry of Property. Ponce, P. R. Certificate relating to Estates Nos. 534, 711, recorded on the back of folios 152, 22, of Volumes of Guayanilla Nos. 33 and 16, respectively. This certificate is issued on January 13, 1938, at the request of attorney Pedro M. Porrata.

EXHIBIT E OF THE PLAINTIFF.

Fernando Zapater Martinez, Attorney and Notary. Ponce, Puerto Rico.

RATIFICATION

No. 72

In Ponce, Island of Puerto Rico, March 31, 1937.

Before Me

Fernando Zapater y Martinez, attorney and notary public for this Island, with my domicile, place of residence and office in said city.

There Appear

Dona Luz Belen, Dona Alicia, Dona Celia, Dona Belen Maria, Dona Gladys and Don Jorge Tous Gonzalez, all of them of age, property owners, domiciled in Ponce, the first two married and the others single.

Mrs. Belen Gonzalez Salicrup widow of Tous, of age, property owner and domiciled in Ponce, appears herein in her own behalf and moreover as mother with *patria potestas* over her minor son Hector Tous Gonzalez, 17 years old, single, property owner and a resident of Ponce; as the guardian of Mr. Jose Tous Gonzalez, incapacitated, of age, single, property owner and casually residing in San Juan, Puerto Rico, and besides, as the attorney-in-fact of Mrs. Ana Rosa Tous Gonzalez, of age, married to Mr. Jose B. Carrion, property owner and domiciled in Humacao, Puerto Rico.

I certify to my personal knowledge of the parties hereto and to their personal characteristics as stated by them. They assure me that they are in the full enjoyment and exercise of their civil rights and being in my opinion sufficiently qualified for the execution of this instrument they freely set forth the following facts.

First:—That by public deed No. 33, executed before notary Fernando Zapater Martinez, on May 9, 1933, recorded in Volume 16 of Guayanilla, on the back of folio 24, Estate No. 711, Twelfth Record and in Volume 33 of Guayanilla, on folio 201, Estate No.

534 triplicate, Fourteenth Record, Mr. Mario Mercado Montalvo, in his capacity as managing partner of the agricultural civil partnership, domiciled in Guayanilla, Puerto Rico, trading as Mario Mercado e Hijos, and also in his own behalf, granted to the parties hereto a mortgage credit constituted by public deed No. 13, executed in Mayaguez, Puerto Rico, on March 23, 1932, before the undersigned notary, acting in the place of Jose Tous Soto, by Mrs. Elvira Olivieri Commins upon a one-half joint interest in the following immovables:

Number One:—A piece of rural property known as Juanita lying in the Pueblo and Quebrada barrios within the judicial district of Guayanilla. It contains 481.77 cuerdas more or less, equivalent to 189 hectares, 35 ares and 45 centiares, partly flat land applied to sugar canes and partly hilly and wooded land. There is built thereon a dwelling frame house raised from the ground, with galvanized-iron roof, and a shed for storing produce. It is bounded on the north by land of Rafael Lopez, of the Rufina plantation, belonging to Mario Mercado e Hijos, and the Heirs of Domingo Torres represented by Isabel Yordan; on the south by said Rufina plantation; on the west by land of the San Rafael plantation owned by the Heirs of Franceschi, by land of Andres Negroni and by land of Antonio Ramos. On the north (*sic*) by land of the latter, by land of the Heirs of Ramon Lopez, by land of Joaquin Lugo and by the road leading to Piedras Blancas barrio, and on the opposite side by land of Antonio Llabres. Said estate is crossed by part of the railroad track.

Number Two:—A piece of rural property known as Los Indios lying in the Indios barrio within the municipal district of Guayanilla with an area of 430 cuerdas equivalent to 169 hectares, 69 centiares, applied to sugar canes, pastures, saltpeter works and woods. There is built thereon a frame house, roofed with galvanized iron and in part with shingles; another frame house, peon quarters, a house for overseers and some other buildings. It is bounded on the north by the road leading from the Barina barrio to the Indios barrio of Guayanilla, by land of the sugar cane

plantation owned by Trujillo & Mercado, now Mario Mercado e Hijos, on the east by land of Gabriel Garcia, by land of the Faro plantation owned at present by Mario Mercado e Hijos and formerly by Trujillo Mercado & Company and by mangroves of the maritime zone; on the south by the Yauco river and by land of the Mercedes plantation owned by Lluberas Hermanos, and on the west by land of Ulises Olivieri and by land of the Heirs of Antonio Perez.

Second:—That the aforesaid mortgage was constituted to secure four promissory notes in favor of the holder by indorsement, all of them to mature on March 23, 1939, and subscribed by said Mrs. Elvira Olivieri Commins for the following amounts: Note No. 1 for $10,000.00 as principal, plus $2,700.00 for interest and $500.00 for costs; Note No. 2 for $10,000.00 as principal, plus $2,700.00 for interest and $500.00 for costs; Note No. 3 for $10,000.00 as principal, plus $2,700.00 for interest and $500.00 for costs, and Note 4 for $11,256.89 as principal, plus $3,000.00 for interest and $500.00 for costs, such mortgage to secure, besides the principal of the aforesaid notes, the sum of $11,100.00 for interest and $2,000.00 for costs, expenses, disbursements and attorney's fees in case of judicial recovery, which notes were made by virtue of the aforesaid deed of "Conveyance of Credit", duly endorsed to the Heirs of Jose Tous Soto, that is, the parties appearing hereto.

Third:—That in the aforesaid deed *In re:* "Constitution of Mortgage", executed before the undersigned notary acting in the place of Jose Tous Soto by Mrs. Elvira Olivieri Commins on March 23, 1932, under No. 13, it is set down as follows:

"Seventh:—Option to Purchase and Sell and to Lease:—Notwithstanding the foregoing clause, the debtor, as part of the consideration of this contract, agrees with the partnership Mario Mercado e Hijos, so long as the mortgage credit herein constituted is not paid, to grant it priority to purchase and sell or lease her undivided joint interests in the estates Indios and Juanita upon the same price and terms. To this effect, the debtor shall

advise, unless such mortgage credit is paid, by registered letter to Mario Mercado e Hijos, of any offer of sale or lease made to her and said partnership shall be granted thirty days for accepting or refusing such offer and during said period the debtor cannot sell or lease to anybody else. Should there be a sale or lease in violation of this agreement, Mario Mercado e Hijos shall be entitled to repurchase from the purchaser or lessee, which right it can exercise for thirty days from the record of such sale or lease for subrogating itself to the place, degree or priority of the purchaser or lessee."

Fourth:—It is set down by the parties hereto in their respective rights and representations, that the conveyance of the mortgage credit constituted by Mrs. Elvira Olivieri Commins by means of deed No. 13, of March 23, 1932, executed before the undersigned notary, acting in the place of Jose Tous Soto, had for its exclusive aim the reception by the Heirs of Jose Tous Soto, parties hereto, of a fixed and certain rent, it being agreed that the said partnership Mario Mercado e Hijos would retain three-fourths of 1% of the interest agreed upon in the said deed of constitution of mortgage.

It was likewise agreed between the parties, in consideration of the solidary obligation assumed by the partnership Mario Mercado e Hijos that such conveyance would not carry with it, and did not so carry, the right or rights constituted in favor of the said partnership Mario Mercado e Hijos in Clause Seventh above transcribed of said deed of constitution of mortgage, said partnership reserving to itself, as it did reserve, the rights and obligations arising from said clause during all the time that the said mortgage might be in force.

It is so stated and agreed upon, and in my presence and in the presence of the witnesses, without any legal impediment, residents of this district and known to me, Mr. Antonio Quinones and Mr. Francisco R. Arevalo.

The present deed has been read by the parties hereto and the witnesses, availing themselves of the right which I warned them

they had, the former ratified its contents and both parties and witnesses signed before me, the notary, who certify to everything stated in this public instrument. I certify to the fact that all the legal requisites of the Notarial Law as finally amended have been complied with.

(Sgd.) LUZ B. TOUS DE USERA.
JORGE TOUS GONZALEZ.
BELEN MARIA TOUS.
MARIA CELIA TOUS.
GLADYS TOUS.
BELEN G. VDA. DE TOUS SOTO.
ALICIA TOUS DE MALDONADO.
ANTONIO QUINONES.
F. R. AREVALO.

There are affixed hereto and cancelled the proper internal revenue stamps. (Initials) L.B.T.U.—J.T.G.—B.M.T.—M.C.T.—G.T.G.—B.G.T.—A.T.G.

Marginal note: On the very day, month and year of its execution I issue copies of this deed in favor of Mrs. Belen G. widow of Tous. I attest.

(Sgd.) Fdo. F. Zapater,
Notary Public.

It is a true and faithful copy of its original on file in the protocol of the corresponding year in this notarial office. By virtue whereof and at the request of the partnership Mario Mercado e Hijos, I issue the present copy which is signed, signeted, paraphed and sealed in Ponce, Puerto Rico, January 14, 1938.

(Sgd.) F. Zapater Martinez.

The initials and paraph of said notary are affixed to all the pages as well as the notarial seal, and there is affixed hereto and cancelled a $0.50 internal revenue stamp.

(The cover page has the following legend: "Attorney Fernando Zapater Martinez—Attorney and Notary Public—No. 72—Deed

of Ratification. Executed by Mrs. Belen G. widow of Tous et als. March 31, 1937. Ponce, Puerto Rico.

EXHIBIT F OF THE PLAINTIFF.

In the District Court for the Judicial District of Ponce, Puerto Rico.—Belen Gonzalez Salicrup widow of Tous, as mother with *patria potestas* over her minor son Hector Tous Gonzalez and guardian of Jose Tous Gonzalez, incapacitated, petitioner, Ex-parte. Civil Case No. 299. *In re:* Ratification of Deed.

PETITION

Now comes before the Honorable Court, Belen Gonzalez Salicrup, petitioner, through her undersigned attorney and respectfully states:

1.—That petitioner is over 21 years of age, property owner, domiciled in Ponce, a widow and mother with *patria potestas* of her minor son Hector Tous Gonzalez, single, a resident of Ponce, 17 years old and guardian of Jose Tous Gonzalez, incapacitated, over 21 years of age, property owner, a casual resident of the city of San Juan, Puerto Rico, which office petitioner accepted and took the oath of before this Honorable Court as appears from the Book of Guardianships.

That this Honorable Court in Civil Case No. 7850, *In re* Necessity and Utility, authorized the petitioner, as mother with *patria potestas* over the children who were minors at the time, Belen Maria, Gladys and Jorge, and Hector Tous Gonzalez, still a minor, and as guardian of Jose Tous Gonzalez, incapacitated, to receive, by conveyance, from the partnership Mario Mercado e Hijos a mortgage credit constituted by Mrs. Elvira Olivieri Commins, by public deed No. 13, dated March 23, 1932, executed in Mayaguez, Puerto Rico, before notary Fernando Zapater Martinez, acting in the place of Jose Tous Soto, upon the estates hereinafter described, there being to this effect executed deed No. 33 dated May 9, 1933, before the said notary Fernando

Zapater Martinez, *In re:* "Conveyance of the above mortgage credit".

The estates involved in the mortgage credit are described as follows:

A joint half interest in the following real properties:

"Number One:—A piece of rural property known as 'Juanita' lying in the 'Pueblo and Quebrada' barrios within the municipal district of Guayanilla. It contains 481.77 cuerdas more or less, equivalent to 189 hectares, 35 ares and 45 centiares, partly flat land applied to sugar canes and partly hilly and wooded land. There is built thereon a dwelling frame house raised from the ground, with galvanized-iron roof, and a shed for storing produce. It is bounded on the north by land of Rafael Lopez, of the 'Rufina' plantation, belonging to Mario Mercado e Hijos, and the Heirs of Domingo Torres represented by Isabel Yordan; on the south by said 'Rufina' plantation; on the west by land of the 'San Rafael' plantation owned by the Heirs of Franceschi, by land of Andres Negroni and by land of Antonio Ramos. On the north (sic) by land of the latter, by land of the Heirs of Ramon Lopez, by land of Joaquin Lugo and by the road leading to 'Piedras Blancas' barrio, and on the opposite side by land of Antonio Llabres. Said estate is crossed by part of the railroad track.

"Number Two:—A piece of rural property known as 'Los Indios' lying in the Indios barrio within the municipal district of Guayanilla with an area of 430 cuerdas equivalent to 169 hectares, 69 centiares, applied to sugar canes, pastures, saltpeter works and woods. There is built thereon a frame house, roofed with galvanized iron and in part with shingles; another frame house, peon quarters, a house for overseers and some other buildings. It is bounded on the north by the road leading from the Barina barrio to the Indios barrio, of Guayanilla, by land of the sugar cane plantation owned by

Trujillo & Mercado, now 'Mario Mercado e Hijos', and by land of the Heirs of Juan Irizarry, on the east by land of Gabriel Garcia, by land of the Faro plantation owned at present by 'Mario Mercado e Hijos' and formerly by 'Trujillo Mercado & Company' and by mangroves of the maritime zone; on the south by the Yauco river and by land of the 'Mercedes' plantation owned by Lluberas Hermanos, and on the west by land of Ulises Olivieri and by land of the Heirs of Antonio Perez."

Respectively recorded in Volume 16 of Guayanilla, back of folio 24, Estate No. 711, Twelfth Record, and in Volume 33 of Guayanilla, folio 201, Estate No. 534 triplicate, Fourteenth Record.

3.—That the said deed, *In re:* Conveyance of Mortgage Credit was executed exclusively so that the Heirs of Jose Tous Soto should have a fixed and certain rent, it being agreed that the said partnership Mario Mercado e Hijos should retain 3/4 of 1% of the interest stipulated in the said mortgage deed and as said partnership assumed the obligation to pay the interest for the conveyed mortgage at the rate of 8 1/4%, Mario Mercado Montalvo individually, and the said partnership, constituting themselves solidary sureties, both of the principal of the mortgage conveyed and of the interest thereon for the time elapsed from the execution of said conveyance to the full payment of principal and interest, excluding therefore the right or rights set down in favor of the said partnership Mario Mercado e Hijos from the seventh clause of the said deed of Constitution of Mortgage, said partnership reserving to itself the rights and obligations arising from said clause during all the time of the life of the said mortgage, said seventh clause literally transcribed reading as follows:

"Seventh:—Option to Purchase and Sell and to Lease:—Notwithstanding the foregoing clause, the debtor, as part of the consideration of this contract, agrees with the partnership Mario Mercado e Hijos, so long as the mortgage credit

herein constituted is not paid, to grant it priority to purchase and sell or lease her undivided joint interests in the estates Indios and Juanita upon the same price and terms. To this effect, the debtor shall advise, unless such mortgage credit is paid, by registered letter to Mario Mercado e Hijos, of any offer of sale or lease made to her and said partnership shall be granted thirty days for accepting or refusing such offer and during said period the debtor cannot sell or lease to anybody else. Should there be a sale or lease in violation of this agreement, Mario Mercado e Hijos shall be entitled to repurchase from the purchaser or lessee, which right it can exercise for thirty days from the record of such sale or lease for subrogating itself to the place, degree or priority of the purchaser or lessee."

4.—That in order to ratify the above particulars, Mrs. Belen Gonzalez Salicrup in her own behalf and in the capacity in which she appears in this petition, and together with the other heirs of legal age of Jose Tous Soto, executed deed No. 72, dated March 31, 1937, before notary Fernando Zapater Martinez, a copy of which is attached to and is made part of this petition.

By Virtue of the Foregoing we pray this Honorable Court to ratify the steps taken by petitioner, Mrs. Belen Gonzalez, widow of Tous, as mother with *patria potestas* over her minor son, Hector Tous Gonzalez, and as the guardian of Jose Tous Gonzalez, incapacitated, for all legal purposes.

Ponce, Puerto Rico, April 2, 1937.

(Sgd.) F. ZAPATER,
Attorney for petitioner.

I, Fernando Zapater Martinez, do solemnly swear:—That I am the attorney for petitioner in the instant case; that I have drafted and read the foregoing petition and that the facts therein stated are true and I know them from personal knowledge. That I make this declaration in the place of the petitioner herself because

she is absent and away from this judicial district of Ponce in the city of San Juan.

(Sgd.) F. Zapater.

Sworn to and subscribed before me by Mr. Fernando Zapater Martinez, of age, an attorney, domiciled in Ponce, Puerto Rico, whom I swear to know personally in Ponce, Puerto Rico, on this the 3rd day of April, 1937.

(Sgd.) Raul Matos,
Notary Public.

Affidavit No. 82. I have been served with copy thereof on this the 3rd day of April, 1937.

(Sgd.) Pedro Rodriguez Serra,
Assistant District Attorney for the District.

(There have been affixed hereto and cancelled one $5.00 and one $0.25 internal revenue stamps and the Bar Association stamp.).

There is at the top a note reading as follows: "Filed April 6/37. E.G.P. Rec. 301 o/c."

In the District Court for the Judicial District of Ponce, P.R.—
Belen G. widow of Tous, et al. Ex-Parte. Civil Case No. 299.
In re: Ratification of Deed.

The instant case having been tried and the oral and documentary evidence for the petitioner having been heard, the court ordered a transcript to be made of the stenographic notes and that the same be forwarded to the district attorney for a written report, after which, a decision will be entered. (From the Minutes Book No. 31, First Section, sitting of April 6, 1937, presided by Hon. Judge Sepulveda.)

I Attest: (Sgd.) E. GOTAY PURCELL, Clerk.
/cs.

In the District Court for the Judicial District of Ponce, P.R.—
Belen Gonzalez Salicrup, Widow of Tous, as Mother with

Patria Potestas Over her Minor Son Hector Tous Gonzalez, and Guardian of Jose Tous Gonzalez, Incapacitated, Petitioner. Ex parte.—Civil Case No. 299. *In re:*—Ratification of Deed.

STENOGRAPHIC RECORD.

On April 6, 1937, this case was called for the hearing of evidence, the court presided by Hon. Domingo Sepulveda, Judge thereof. The petitioner was represented by her counsel, Attorney Fernando Zapater Martinez.

(Attorney Zapater Martinez is sworn.)

EVIDENCE FOR PETITIONER

Affidavit of Attorney FERNANDO ZAPATER MARTINEZ.

Witness:

My name is Fernando Zapater, I am an attorney domiciled in Ponce; I am the attorney for the Heirs of Jose Tous Soto; Mrs. Belen Gonzalez, widow of Tous is mother, with *patria potestas*, of the minor Hector Tous Gonzalez and guardian of Jose Tous Gonzalez, incapacitated. Some days ago this Court authorized Mrs. Gonzalez, the widow of Tous, to execute a deed cancelling the mortgage credit which had been conveyed to the Heirs of Jose Tous Soto by the partnership Mario Mercado e Hijos for $41,256.89. When the above mortgage credit was constituted, a clause was inserted in which the mortgagee, Mrs. Elvira Olivieri Commins and the partnership Mario Mercado e Hijos, set forth that if during the life of such mortgage such estates thereof were sold or leased, the partnership Mario Mercado e Hijos reserved to itself the right to repurchase said estates, if sold, or to get the lease, if a lease was granted, within thirty days after been served with notice of such sale or lease. In the deed conveying the said mortgage credit it was stipulated that the Heirs of Jose Tous Soto acquired the principal of the mortgage credit plus accrued interest only at the rate of 8-1/4% annually, the partnership Mario Mercado e Hijos reserving to itself 3/4 of 1%, as a consideration for the fact that the partnership Mario Mercado e

Hijos and its managing partner Mr. Mario Mercado Montalvo solidarily guaranteed to the Heirs of Tous Soto, not only the principal, but the interest as well on such credit until the same should be fully paid. After the deed of cancellation was executed, it is alleged by the partnership Mario Mercado e Hijos, that since on making the deal . . . I wish to explain to the Court that this deal was made as an act of liberality on the part of Mario Mercado e Hijos, inasmuch as upon the death of Jose Tous Soto, his family found themselves in possession of forty-one thousand and odd dollars which they could not invest, and in consideration of the friendship which always existed between Mr. Mario Mercado and Mr. Jose Tous, Mr. Mario Mercado agreed in behalf of the partnership to let the heirs acquire such mortgage credit in order to have an income. Upon Mario Mercado e Hijos becoming aware that the cancellation in question had been made and inasmuch as Mario Mercado e Hijos legally retained an interest in the mortgage credit to which I have been referring, it applies to the Heirs of Tous Soto to explain the fact, which we are now explaining: That as regards the mortgage credit there was only conveyed the principal and the interest thereon, but since the partnership Mario Mercado e Hijos remained liable for the payment of the principal and interest thereon, the right to take by purchase or lease was reserved to itself by Mario Mercado e Hijos, that the Heirs of Tous Soto were not interested in such right, as is acknowledged by all the heirs of legal age and by Mrs. Belen Gonzalez, widow of Tous, in her own right and as guardian and mother, with *patria potestas*, of the minor and incapacitated children above mentioned. This is set down in the public deed before us, which is deed No. 72, dated March 31, 1937, executed before notary Fernando Zapater Martinez. Of course, it is for the benefit of the minor and incapacitated Tous Gonzalez that this Honorable Court should approve this ratification or explanation, rather, because it might happen that the Heirs of Mario Mercado e Hijos might sue such minors to compel them to execute such deed or in order to recall such fact in

some way. As actually no harm to them will result because they received their principal and interest and really they never had any interest in such right of conventional redemption, they did recall such fact, and as minors are involved, the Court should ratify such statements embodied in a public deed.

Judge: The situation which I want to be explained is this: What is intended by that deed?

It was set down as follows . . .

But . . .

There appeared the widow of Tous Soto and the heirs of legal age, that is, Mrs. Luz Belen Tous de Usera, Mrs. Alicia Tous de Maldonado and Miss Celia Tous Gonzalez, Mr. Jorge Tous Gonzalez, Miss Gladys Tous Gonzalez and they set down in the deed the fact that when they acquired that mortgage credit they only acquired the principal and the interest thereon but they never had any interest in, nor did they acquire the right to exercise the redemption in case of sale or of lease.

What is intended to be explained by the deed?

To explain what was done verbally, to set it down in the deed: That when the Heirs of Tous Soto acquired that mortgage credit, the principal and interest thereon, they were not interested, nor were they ever interested, in repurchasing that estate if the same was sold by the mortgagee, or the lease right, inasmuch as such right belongs to Mario Mercado e Hijos. That if those estates were sold or leased while the mortgage was in force, the partnership Mario Mercado e Hijos should be entitled to purchase or lease under the same terms.

Judge: The mortgage credit?

The mortgage credit has been now satisfied.

And what is intended to be explained by that deed?

It is set down that the Heirs of Tous Soto had no interest in acquiring the right of redemption or the right to lease.

Who owns the mortgage credit now?

Nobody because it was cancelled pursuant to the authorization from this Court.

Was it cancelled?

It was cancelled.

But what is the object of the explanation?

The explanation is made because although there is a contract of lease in force in favor of Mario Mercado e Hijos, it is feared; or believed that the owners of the estates might sell to somebody else and thus cheat Mario Mercado e Hijos of its right to repurchase or lease the estates.

Judge: Where did such right arise from?

It arose from the deed of execution of the mortgage credit; when Mrs. Elvira Olivieri executed the mortgage in favor of Mr. Mario Mercado it was stipulated, as a consideration for the mortgage, that in the event that the estate were sold or leased while the mortgage was alive, the partnership Mario Mercado e Hijos would be entitled to repurchase within one month after been advised of such sale or lease, under the same terms granted to any purchaser. I want to explain that this clause was inserted inasmuch as these estates are leased to Mario Mercado e Hijos until June 30 of this year; I mean to say that until the 30th of June . . .

Who owned those estates?

Mrs. Elvira Olivieri Commins.

And Mrs. Elvira Olivieri Commins . . .

She executed a mortgage in favor of Mario Mercado e Hijos for the sum of $41,000.00.

What happened afterwards?

Then Mario Mercado e Hijos, in order to let the Heirs of Tous Soto have an income, it conveyed that mortgage to them.

Judge: Was it sold to them?

It was.

For that sum?

Yes, sir. It bore interest at the rate of 8-1/4%, inasmuch as Mario Mercado . . . The mortgage was executed at 9% originally and Mario Mercado conveyed it to the Heirs of Tous Soto bearing interest at the rate of 8-1/4% and the 3/4% was reserved to itself by Mario Mercado e Hijos, because said firm was responsible for any sum that might not be received by the Heirs either regarding principal or interest.

Subsequently, how did the mortgage credit continue?

Subsequently, the mortgagee proposed to the Heirs of Jose Tous Soto to cancel the mortgage credit by paying the principal and three-month interest.

That is so.

Indeed, as to the said minor, *viz.*, Hector Tous Gonzalez, and Jose Tous Gonzalez, incapacitated, a petition was filed in this Court which authorized Mrs. Belen Gonzalez, in behalf of the minor and of the incapacitated one, to cancel the mortgage.

Judge: Did she receive the money?

And the share belonging to the minor and incapacitated one was deposited in court, and on Mario Mercado e Hijos hearing of this and inasmuch as Mario Mercado e Hijos held a 3/4% interest on the mortgage and inasmuch as when the mortgage was executed, Mario Mercado e Hijos reserved to itself the aforementioned right to purchase and lease, Mrs. Belen Gonzalez did not object to having it set down in the deed.

Is that the deed you have in your hands?

Yes, sir. And that is the deed which we wish to submit for ratification by the court in the steps taken by the guardian and mother with *patria potestas*, Mrs. Tous.

And such condition was to last as long as the mortgage?

Yes, sir.

And after the cancellation of the mortgage?

So long as the mortgage was in force. The question is

that such is the condition; but the Court should not lose sight of the fact that Mario Mercado e Hijos reserved to itself part of the interest.

Judge: Yes, all right.

That is a question arising from the clause itself that as the mortgage was cancelled may be the mortgage credit was cancelled, but that point is not in issue, the Heirs are not interested in that. That is an issue between Mario Mercado e Hijos and Mrs. Elvira Olivieri Commins.

What is the purpose of executing the deed?

In case a sale or lease to somebody else appears. The partnership Mario Mercado e Hijos, which candidly advanced its money, wants the fact recorded by Mrs. Belen Gonzalez and the Heirs of Jose Tous Soto that they have no interest in claiming either the estates or the lease thereof. If any right accrues in favor of Mario Mercado e Hijos it will be incumbent upon them to exercise the same.

Now I understand.

Attorney: We are going to submit in evidence copy of deed No. 72, dated March 31, 1937, executed before notary Fernando Zapater, duly certified.

Judge: Admission granted.

Witness: Then, if it is for the benefit of Mario Mercado e Hijos, or if a suit was brought, it will be up to them to discuss it.

Judge: Here mention is made of two minors: Hector Tous Gonzalez . . . Is this person present?

Hector Tous Gonzalez is a minor. He is incapacitated but as he has not become of age we have not had him declared incapacitated.

Is he . . .

He is fourteen years of age; fourteen or thirteen.

Seventeen is stated here.

That is his age.

Why is he not present in court?

Because he is incapacitated . . . He is in Dr. Julia's Clinic, in San Juan.

Now mention is made of another: Jose.

Jose Tous Gonzalez . . . He has been declared incapacitated by this Court and is in Dr. Julia's Clinic.

Is this why he is not present?

Yes, sir. That is why they are not present.

Attorney: That is all.

Judge: The transcript of the stenographic notes are ordered to be attached to the record and to be handed to the district attorney for a written report.

I, Jose Cruz Montero, stenographer-reporter of the District Court for the Judicial District of Ponce, Puerto Rico, Do Hereby Certify.

That the foregoing is a true and faithful transcript of the stenographic notes taken down by me during the hearing of Civil Case No. 299, Belen Gonzalez Salicrup, widow of Tous, as mother, with *patria potestas,* of the minor Hector Tous Gonzalez, and guardian of the incapacitated, Jose Tous Gonzalez, petitioner, *In re:* Ratification of Deed; and I further certify that said stenographic notes were truly and faithfully taken and truly and faithfully represent the statements made during the hearing already mentioned.

And pursuant to an order of the Court to be attached to the record in the aforesaid case, I issue this certificate in Ponce, Puerto Rico, on this the 7th day of April, 1937, for all legal purposes.

(Sgd.) JOSE CRUZ MONTERO,
Stenographer-reporter of the District Court for the Judicial District of Ponce, P. R.

In the District Court for the Judicial District of Ponce, P. R.
Belen Gonzalez Salicrup Widow of Tous, as Mother, with *Patria Potestas,* of the Minor Hector Tous Gonzalez, and Guardian of the Incapacitated, Jose Tous Gonzalez, Peti

tioner. *Ex parte.* Civil Case No. 299. *In re:* Ratification of Deed.

REPORT OF THE DISTRICT ATTORNEY.

The undersigned district attorney, having examined this record, informs the Court that he has no objection whatever to the granting of the petition. Ponce, Puerto Rico, April 7, 1937.

(Sgd.) PEDRO RODRIGUEZ SERRA,
Assistant District Attorney for this District.

In the District Court for the Judicial District of Ponce, P. R. Belen Gonzalez Salicrup, Widow of Tous, as Mother, with *Patria Potestas,* of the Minor Hector Tous Gonzalez, and Guardian of the Incapacitated, Jose Tous Gonzalez, Petitioner. *Ex parte.* Civil Case No. 299. *In re:* Ratification of Deed.

ORDER.

Whereas:—Petitioner herein Belen Gonzalez Salicrup, widow of Tous, as mother with *patria potestas* over her minor son Hector Tous Gonzalez, and the guardian of the incapacitated Jose Tous Gonzalez, appeared before this court and alleged that in civil case No. 7850, *In re:* Necessity and Utility, before this court, the petitioner was authorized, as mother with *patria potestas* over her children, minors at the time Belen Maria, Gladys and Jorge; and Hector Tous Gonzalez still a minor, and as guardian of the incapacitated Jose Tous Gonzalez, to take, by conveyance from the partnership Mario Mercado e Hijos, a mortgage credit constituted by Mrs. Elvira Olivieri Commins by public deed No. 13, dated March 23, 1932, executed in Mayaguez, Puerto Rico, before notary Fernando Zapater, acting in the place of Jose Tous Soto, regarding the estates hereinafter described, executing to this effect deed No. 33, dated May 9, 1933, before the aforesaid notary Fernando Zapater Martinez, *In re:* "Conveyance of Said Mortgage Credit", the encumbered estates being described as follows:

"A Joint Half Interest in the Following Real Properties:

Number One: A piece of rural property known as Juanita, lying in the 'Pueblo and Quebrada' barrios within the municipal district of Guayanilla. It contains 481.77 cuerdas more or less, equivalent to 189 hectares, 35 ares and 45 centiares, partly flat land applied to sugar canes and partly hilly and wooded land. There is built thereon a dwelling frame house raised from the ground, with galzanized-iron roof, and a shed for storing produce. It is bounded on the north by land of Rafael Lopez, of the 'Rufina' plantation, belonging to Mario Mercado e Hijos, and the Heirs of Domingo Torres represented by Isabel Yordan; on the south by said 'Rufina' plantation; on the west by land of the 'San Rafael' plantation owned by the Heirs of Franceschi, by land of Andres Negroni and by land of Antonio Ramos. On the north (*sic*) by land of the latter, by land of the Heirs of Ramon Lopez, by land of Joaquin Lugo and by the road leading to 'Piedras Blancas' barrio, and on the opposite side by land of Antonio Llabres. Said estate is crossed by part of the railroad track.

"Number Two:—A piece of rural property known as 'Los Indios' lying in the Indios barrio within the municipal district of Guayanilla with an area of 430 cuerdas equivalent to 169 hectares, 69 centiares, applied to sugar canes, pastures, saltpeter works and woods. There is built thereon a frame house, roofed with galvanized iron and in part with shingles; another frame house, peon quarters, a house for overseers and some other buildings. It is bounded on the north by the road leading from the Barina barrio to the Indios barrio of Guayanilla, by land of the sugar cane plantation owned by Trujillo & Mercado, now Mario Mercado e Hijos, and by land of the Heirs of Juan Irizarry; on the east by land of Gabriel Garcia, by land of the Faro plantation owned at present by 'Mario Mercado e Hijos' and formerly by 'Trujillo Mercado & Company' and by mangroves of the maritime zone; on the south by the Yauco river and by land of

the 'Mercedes' plantation owned by Lluberas Hermanos, and on the west by land of Ulises Olivieri and by land of the Heirs of Antonio Perez.

"Respectively recorded in Volume 16 of Guayanilla, back of folio 24, Estate No. 711, Twelfth Record, and in Volume 33 of Guayanilla, folio 201, Estate No. 534 triplicate, Fourteenth Record."

Whereas:—It is further alleged that the said deed, *In re:* "Conveyance of Mortgage Credit" was executed exclusively so that the Heirs of Jose Tous Soto should have a fixed and certain rent, it being agreed that the said partnership Mario Mercado e Hijos should retain 3/4 of 1% of the interest stipulated in the said mortgage deed and as said partnership assumed the obligation to pay the interest for the conveyed mortgage at the rate of 8-1/4%, Mario Mercado Montalvo, individually, and the said partnership, constituting themselves solidary sureties, both of the principal of the mortgage conveyed and of the interest thereon for the time elapsed from the execution of said conveyance to the full payment of principal and interest, excluding therefore the right or rights set down in favor of the said partnership Mario Mercado e Hijos from the seventh clause of the said deed of "Constitution of Mortgage", said partnership reserving to itself the rights and obligations arising from said clause during all the time of the life of the said mortgage, said seventh clause literally transcribed reading as follows:

"Seventh:—Option to Purchase and Sell and to Lease. Notwithstanding the foregoing clause, the debtor, as part of the consideration of this contract, agrees with the partnership Mario Mercado e Hijos, so long as the mortgage credit herein constituted is not paid, to grant it priority to purchase and sell or lease her undivided joint interests in the estates Indios and Juanita upon the same price and terms. To this effect, the debtor shall advise, unless such mortgage credit is paid, by registered letter to Mario Mercado e Hijos, of

any offer of sale or lease made to her and said partnership shall be granted thirty days for accepting or refusing such offer and during said period the debtor cannot sell or lease to anybody else. Should there be a sale or lease in violation of this agreement, Matio Mercado e Hijos shall be entitled to repurchase from the purchaser or lessee, which right it can exercise for thirty days from the record of such sale or lease for subrogating itself to the place, degree or priority of the purchaser or lessee."

Whereas:—It is likewise alleged that, in order to ratify the above particulars, the petitioner, in her own behalf and in the capacity in which she appears in the present case, and together with the other heirs of legal age of Jose Tous Soto, executed deed No. 72, dated March 31, 1937, before notary Fernando Zapater Martinez.

Whereas:—At the trial of the present case, with the appearance of the district attorney, all the particulars alleged were shown, to the satisfaction of this court, by means of documentary and oral evidence, the district attorney having made a favorable report.

Therefore:—The court approves hereby deed No. 72, dated March 31, 1937, executed before notary Fernando Zapater Martinez, in so far as the same refers to the steps taken by petitioner, Mrs. Belen Gonzalez Salicrup, widow of Tous, as mother with *patria potestas* over her minor son, Hector Tous Gonzalez, and as guardian of the incapacitated, Jose Tous Gonzalez, for all the legal purposes that might be proper. Ponce, Puerto Rico, April 7, 1937.

(Sgd.) D. SEPULVEDA,
District Judge.

In the District Court for the Judicial District of Ponce, P.R.—Belen Gonzalez Salicrup et als., Petitioners. *In re:* Ratification of Deed. No. 299.

WITHDRAWAL OF PAPERS FROM RECORD.

Now comes before this Honorable Court the petitioner herein through her undersigned attorney and moves for the withdrawal from the record of deed No. 72, dated March 31, 1937, executed before F. Zapater. Ponce, P.R., April 13, 1937.

(Sgd.) F. ZAPATER,
Attorney for petitioner.

ORDER

Motion granted upon delivery of receipt.

(Sgd.) D. SEPULVEDA,
District Judge.

Ponce, P.R., April 14, 1937.

I received the foregoing instrument this 14th day of April, 1937.

(Sgd.) F. Zapater,
Attorney for petitioner.

(There is a cover page with the following legend: "299. Fernando Zapater,—Attorney and Notary Public, Ponce P.R.—District Court for the Judicial District of Ponce, P.R. Suit No. 299.—Belen G., widow of Tous, et al., Ex-parte, Petitioner. *In re:* Ratification of Deed. Fernando Zapater, Attorney for petitioner.

The complaint is dated April 6, 1937. Date of the inclusion of the case in the calendar: April 6, 1937. Date of the judgment: April 7, 1937. Remarks: Judgment entered April 8, 1937 on Folio 296 of Book 107 of Civil Judgments. 1,200 words. Rec. 301 o/c.

EXHIBIT G OF THE PLAINTIFF.

No. 30

Voluntary Mortgage

In Mayaguez, Puerto Rico, on this the 25th day of February, 1937,—

Before Me

Luis Lopez de Victoria, Attorney and Notary Public for Puerto Rico, with domicile and office in Yauco, Puerto Rico,

There Appear

On one side: Mrs. Elvira Olivieri Y Commins, of age, single on account of divorce, property owner and domiciled in Mayaguez, Puerto Rico,—

On the other side: Mr. Manuel Francisco Lluberas Pasarell, of age, property owner, domiciled in Yauco, married to Mrs. Hazel Kells.

I Certify to my personal knowledge of the parties and to their statements as to their being of age, their status, professions and place of residence. They assure that they have, and in my opinion they do have, the necessary legal qualifications for the present execution, and by virtue thereof, Mrs. Elvira Olivieri Commins sets forth:

First:—That she is the owner of the following real properties:

Number One—Rural: A tract of land consisting of 79.46 cuerdas, equivalent to 31 hectares, 23 ares, 8 centiares, and 79 miliares, lying in the Indios barrio of the municipal district of Guayanilla, which is made up of the following parcels: Parcel "A" with an area of 41.26 cuerdas known by the name of Cupey of flat land planted to sugar canes; Parcel "B" containing 4 cuerdas of flat land, planted to sugar canes; Parcel "C" having 20.52 cuerdas of semiflat land, at present planted to lesser crops; Parcel "D" containing 1.68 cuerdas of semiflat land planted to lesser crops; and Parcel "E" containing 12 cuerdas of semiflat land planted to lesser crops. The whole tract is bounded as follows: on the

north by land of Santia Olivieri, the track of the American Railroad Company and from the west angle of Parcel "D", by the municipal road leading from Guayanilla to the Boca barrio; on the south by land of Arturo Lluberas and nephews, by the Yauco river, by a 0.30-cuerda undivided parcel containing the pump and belonging to Santia and Elvira Olivieri Commins, and with land of Santia Olivieri Commins; on the east by land of Santia Olivieri, and on the west by land of Mariano Lugo, by land of Ramon Ramirez, and by an old road which divided land of Ramon Lluberas, Luis Cervoni, Dolores Lopez and land of Luis Cervoni and on the southwest land of Arturo Lluberas and nephews. The fact is recorded that all along the east side there is a private road belonging to Santia and Elvira Olivieri, 6 meters wide, which proceeds along the west side of Parcel "B" as far as the undivided 0.30-cuerda parcel where the irrigation pump stands. Within this tract, but enclosed by said Parcel "C" there is a small parcel of land jointly owned by Santia and Elvira Olivieri with an area of $0.25-cuerda and there is built thereon a small house with a concrete foundation for a pump. And it is hereby explained that the aforesaid parcels marked letters "E" and "D" are separated, the former, partly on its east side, by the road leading from Guayanilla to the Boca barrio and the latter by the railroad track, both in connection with Parcel "C", and the former is also separated, in connection with the latter, by the said railroad track.

Number Two:—A portion or parcel of saltpeter land lying in the Indios barrio of the municipal district of Guayanilla and bounded: on the north by land of Mario Mercado e Hijos; on the south by a cano within the land of Santia Olivieri; on the east by the Caribbean Sea and on the west by a 6-meter wide road, three meters of which is part of this parcel and the other three meters part of the parcel of land belonging to Santia Olivieri. Its area is 41.99 cuerdas, equivalent to 16 hectares, 50 ares, 37 centiares and 7 miliares of saltpeter land.

Number Three:—A $50.00 undivided half interest in the following $100.00-worth parcel:

Undivided parcel of land with an area of 0.30 cuerda, equivalent to 11 ares, 79 centiares and 12 miliares with a small house thereon fenced and roofed with galvanized-iron, with a steam pump with every accessory and pipes for pumping water from the Yauco river for the irrigation of the estates belonging to Santia and Elvira Olivieri, situated in the Indios barrio of the municipal district of Guayanilla and bounded as follows: on the north by land belonging to Elvira Olivieri Commins; on the south by the Yauco river; on the east by land belonging to Santia Olivieri Commins and on the west by land belonging to Elvira Olivieri Commins.

Number Four:—A $50.00 undivided half interest in the following $100.00-worth parcel:

Rural. An undivided parcel of land measuring 0.25 cuerda, equivalent to 9 ares, 82 centiares, and 60 miliares, possibly destined to have installed thereon a pump for drawing water from adjacent springs, with a cement foundation with a small house roofed and fenced with galvanized iron and pipes. This parcel of land is situated in the Indios barrio of the municipal district of Guayanilla and bounded as follows: on the north, west and east by Parcel "C" of the estate belonging to Elvira Olivieri Commins; and on the south by Parcel "A" known as Cupey from the same estate of Elvira Olivieri Commins.

Number Five: Rural. An estate known as "Juanita" lying in the Pueblo and Quebrada barrios of the municipal district of Guayanilla, with an area of 81.77 cuerdas of flat land applied to sugar canes and 378.91 cuerdas of wood and pasture land, and a water pump for irrigating said canes and a frame house with the galvanized-iron roof in poor condition. It is bounded on the north by land of the Heirs of Antonio Ramos, of Jesus Rodriguez, of Ricardo Rodriguez, of Dr. Jose Cobian, and of the Heirs of Lugo and a municipal road separating land partly of Mario Mercado e Hijos; on the south by land of Mario Mercado e Hijos and partly by a municipal road separating land of said concern,

by land of Santia de la Cruz de Pacheco, of Catalina Tirado and of Mario Mercado e Hijos; on the east by land of the aforesaid Mario Mercado e Hijos; on the northwest by land of the Heirs of Antonio Ramos and of Joaquin Diaz, of Herminia Morales, and the woodland of the San Rafael plantation, of the Heirs of Angela and Dario Franceschi; on the southwest by land of Mario Mercado e Hijos. This estate is crossed from south to the northwest by the tracks of the American Railroad Company of Puerto Rico. Its area is 460.68 cuerdas equivalent to 181 hectares, 6 ares and 57 centiares.

Second: The mortgagee acquired the aforesaid immovables on account of the actual distribution of rural estates for the reasons set forth in deed No. 73, executed on August 20, 1936, in Yauco, before notary Tomas Paz y Ruiz.

Liens

Third:—The immovables above described are encumbered exclusively by the following liens:—

A.—A lien in favor of Mario Mercado e Hijos constituted by deed No. 50, in Ponce, Puerto Rico, on April 5, 1927, before notary Francisco Parra Capo for ten years which began to run on June 2, 1927, and will expire on June 2, 1937.

B.—A first voluntary mortgage originally executed in favor of Mario Mercado e Hijos as security for the sum of $41,256.89, which was constituted by deed No. 13, executed in Mayaguez, Puerto Rico, on March 23, 1932, before notary Fernando Zapater Martinez, acting in the place of his colleague, Jose Tous Soto. Mrs. Elvira Olivieri Commins issued, granted and delivered in settlement of the mortgage debt to the partnership Mario Mercado e Hijos four promissory notes to bearer by indorsement, all of them to mature on March 23, 1939, promissory note No. 1 for $10,000.00 as principal, plus $2,700.00 for interest and $500.00 for costs; promissory note No. 2 for $10,000.00 as principal, plus $2,700.00 for interest and $500.00 for costs; promissory note No.

3 for $10,000.00 as principal, plus $2,700.00 for interest and $500.00 for costs, and, promissory note No. 4 for $11,256.89 as principal, plus $3,000.00 for interest and $500.00 for costs. This mortgage was constituted upon the condominiums held by Mrs. Elvira Olivieri Commins in two rural estates in joint ownership with Mrs. Santia Olivieri Commins, which joint ownership was dissolved by the aforesaid deed No. 73, dated August 20, 1936, executed before notary Tomas Paz y Ruiz, the portions allotted to Mrs. Elvira Olivieri Commins still being encumbered by such lien. The aforesaid mortgage credit was conveyed by Mario Mercado e Hijos to Mrs. Belen Gonzalez, widow of Tous, and children, as per deed No. 33, dated May 9, 1933, and executed before notary Fernando Zapater Martinez.

Acknowledgment of Indebtedness

Fourth:—Mrs. Elvira Olivieri Commins acknowledges to be indebted to Mr. Manuel Francisco Lluberas Pasarell in the sum of $45,000.00 as the amount of a loan that the latter has made to her in cash, in American legal tender, on this day, for six months to be counted from this day. The loan will bear interest from now on until the same is fully paid at the rate of 8% annually, interest to be paid together with the principal at maturity.

Mortgage

Fifth:—To secure the payment of the amount of the loan, $45,000.00, interest thereon and a further sum of $900.00 for disbursements, costs and attorney's fees in case of judicial recovery, Mrs. Elvira Olivieri Commins constitutes in favor of Mr. Manuel Francisco Lluberas Pasarell, a voluntary mortgage upon all and everyone of the estates described in the first paragraph of this deed, which lien will continue encumbering such immovables until the total cancellation of the proper record entry made in the Registry of Property.

Distribution of Liens

Sixth:—The mortgage lien is distributed among the immovables described, as follows: immovable No. One shall be liable for $38,900.00 as principal, with the respective interest thereon and $400.00 for costs, disbursements and attorney's fees in case of judicial recovery; immovable No. Two shall be liable for $700.00 as principal, with the respective interest thereon and $100.00 for disbursements, costs and attorney's fees in case of judicial recovery; immovable No. Three shall be liable for $200.00 as principal, interest thereon and $100.00 for disbursements, costs and attorney's fees in case of judicial recovery; immovable No. Four shall be liable for $200.00 as principal, interest thereon and $100.00 for disbursements, costs and attorney's fees in case of judicial recovery, and, immovable No. Five shall be liable for $5,000.00 as principal, interest thereon and $200.00 for disbursements, costs and attorney's fees in case of judicial recovery.

Seventh:—Pursuant to Article 127 of the Mortgage Law, the mortgaged immovables are appraised by mutual agreement between the parties as follows:—Immovable marked No. One, at $40,500.00; immovable marked No. Two, at $1,000.00; immovable marked No. Three, at $350.00; immovable marked No. Four, at $350.00; and, immovable marked No. Five, at $5,500.00.

Power of Attorney

Eighth:—It is expressly agreed between mortgagee and mortgagor that the loan of $45,000, made by the latter to the former is to be secured by a voluntary first mortgage on said immovables, and as the immovables appear encumbered by the mortgage above referred to, *viz.*, the one originally constituted in favor of Mario Mercado e Hijos and then conveyed to Mrs. Belen Gonzalez Salicrup, widow of Tous Soto and her children, Mrs. Elvira Olivieri Commins leaves in the possession of Mr. Manuel Francisco Lluberas Pasarell the $45,000.00 of the mortgage loan, and at the same time she designates, appoints and constitutes Mr.

Manuel Francisco Lluberas Pasarell her special attorney-in-fact in order that the latter, as the representative of herself personally and of her rights and actions, should proceed to effect the payment of the mortgage credit in favor of Mrs. Belen Gonzalez Salicrup, widow of Tous Soto and her children and to get back the mortgage notes representing said mortgage credit and should proceed to obtain the total cancellation of the said mortgage and should present a certified copy of the deed of cancellation or the paper representing the same in the Registry of Property of Ponce so that notice of such cancellation be entered in said Registry, with wide powers to the attorney-in-fact to make tender of payment of said mortgage credit, and in case of refusal to accept such payment, to proceed to deposit in the proper court the amount of such credit, leaving at the sound discretion of the attorney-in-fact the taking of the proper steps to obtain the cancellation of such mortgage. Once such mortgage credit has been satisfied and recorded in the Registry of Property of Ponce, the mortgage credit constituted by this deed in favor of Mr. Manuel Francisco Lluberas Pasarell, as first mortgage, attorney-in-fact, Mr. Lluberas Pasarell, shall return and deliver to Mrs. Elvira Olivieri Commins the balance up to $45,000.00, after deducting any disbursements made for securing the cancellation of such mortgage credit.

Ninth:—Mr. Manuel Francisco Lluberas Pasarell consents to the mortgage and both parties consent to this deed.

I, the notary, instructed the parties hereto regarding their rights and duties under the law and pertinent herein of which they were duly informed.

It is so executed before the witnesses herein, who are of age, known to me, without any legal impediment to act as such, and domiciled in Mayaguez, Attorney Jose Sabater and Mr. Manuel Pagan Esmoris.

And having been instructed of their right under the law to read the present deed themselves, of which right they availed themselves, the parties ratify its contents and the witnesses affix

their signatures, the parties hereto affixing also their respective initials to the other folios of this deed, in conformity with law.

To all of which I, the notary, Certify.

(Sgd.) ELVIRA OLIVIERI.
M. FRANCISCO LLUBERAS.
JOSE SABATER.
MANUEL PAGAN ESMORIS.

(Signed, signeted, sealed and paraphed.)

Luis Lopez de Victoria.

There are affixed to the original copy and cancelled the proper internal revenue stamps.

It is a true and faithful copy of its original which is deed No. 30, executed in Mayaguez, P.R., on February 25, 1937, on file in my protocol of public instruments to which I refer. And at the request of Mr. Manuel Francisco Lluberas Pasarell I issue the present copy on the same day of the execution of its original, leaving a note of this issuance. Internal revenue stamps worth $5.90 are herein cancelled.

(Sgd.) Luis Lopez de Victoria.

Signeted, paraphed and sealed by said notary. Each page bears the notarial seal and the paraph of the said notary. (At the back of the last page we find the following: a $0.50 internal revenue stamp and underneath it says: "A $0.50 stamp is cancelled, No. 1 Schedule of Fees.") (There is then stamped a rubber stamp reading as follows: "Presented at 10:00 A.M., on this date and entered on Folio 265 of Volume 285 of the Daybook. Ponce, P.R., March 1, 1937.

The Registrar: (Sgd.) Miguel Planellas.")

(There is then a handwritten note reading as follows: "This instrument has been recorded only as regards the estate described under number five on folio 164 of Volume 36 of Guayanilla, property No. 711 triplicate, Fourteenth Record. In addition to

the mortgage herein constituted, this estate is encumbered by the liens mentioned in this instrument. Ponce, March 9, 1937.

The Registrar: (Sgd.) Miguel Planellas."

There are affixed hereto and cancelled interral revenue stamps worth $9.00 and further down it says: "Cancelled: One $5.00 stamp, one $3.00 stamp and another $1.00 stamp. No. 5 of the Schedule of Fees, P.C. Dated as above.

(Sgd.) Miguel Planellas.)

(This deed has a cover page with the following legend: "Luis Lopez de Victoria. Attorney and Notary Public. P.O. Box 114. Telephone 47. Copy of deed No. 30 of Voluntary Mortgage. Executed: By Mrs. Elvira Olivieri Commins and Mr. Manuel Francisco Lluberas Pasarell. February 25, 1937. Mayaguez, Puerto Rico.")

EXHIBIT H OF THE PLAINTIFF.

Government of Puerto Rico. Department of Justice. District Court of Ponce. No. 702. April 8, 1937.

I received from Mario Mercado e Hijos the sum of $45,359.50 in Civil Case No. 310, deposited in bank notes.

Costs	$
Penalties	$
Deposited	$ 45,359.50
Total	$ 45,359.50

E. GOTAY PURCELL, Clerk.

A. MALDONADO,
Assistant clerk.

EXHIBIT I OF THE PLAINTIFF.

CANCELLATION OF MORTGAGE
No. 47.

In Ponce, Island of Puerto Rico, on March 8, 1937.

Before Me

Fernando Zapater y Martinez, Attorney and Notary Public for this Island, with place of residence, domicile and open office in this city,—

There Appear

Mrs. Luz Belen, Mrs. Ana-Rosa and Mrs. Alicia Tous Gonzalez, of age, joined by their respective spouses Mr. Vicente Usera Jr., Mr. Jose B. Carrion and Mr. Ignacio Maldonado,—

Miss Celia, Miss Belen-Maria, Miss Gladys and Mr. Jorge Tous Gonzalez. All the above parties are of age, property owners, domiciled in Ponce, except Mrs. Ana-Rosa Tous Gonzalez who resides in Humacao, said Jorge, Celia, Belen Maria and Gladys being single.

All of them appear herein in their own right.

Mrs. Belen Gonzalez Salicrup, widow of Tous, of age, property owner, domiciled in Ponce,—

Appears herein in her own behalf and moreover as mother with *patria potestas* over her minor son, Mr. Hector Tous Gonzalez, seventeen years old, single, property owner, and domiciled in Ponce, and as the guardian of Mr. Jose Tous Gonzalez, incapacitated, of age, single, property owner, and casually a resident of San Juan, Puerto Rico, all of which duly appears from the judgment rendered by the District Court of Ponce, P. R., whereby she is authorized to execute this deed, and which literally transcribed reads as follows:

"In the District Court for the Judicial District of Ponce, P. R.—Belen Gonzalez Salicrup, widow of Tous, as mother, with *patria potestas*, of the minor Hector Tous Gonzalez, and

guardian of the incapacitated, Jose Tous y Gonzalez, petitioner. Ex-parte. Civil case No. 203. —Judicial Authorization—

Order

"Whereas: Mrs. Belen Gonzalez Salicrup, widow of Tous, appeared before this court through her attorney Fernando Zapater Martinez and alleged: that petitioner is over 21 years of age, property owner domiciled in Ponce and mother with *patria potestas* over the minor Hector Tous Gonzalez, 17 years old, property owner, domiciled in Ponce, and guardian of Jose Tous Gonzalez, incapacitated, over 21 years of age, property owner, a casual resident of San Juan, Puerto Rico, which office the petitioner accepted and was sworn to before this court as appears from the proper Registry of Guardianship.

"Whereas: It is further alleged that by public deed No. 33, dated May 9, 1933, executed before notary Fernando Zapater Martinez, recorded in Volume 16 of Guayanilla, back of folio 24, estate No. 711, Twelfth record, and in Volume 33 of Guayanilla, folio 201, estate No. 534 triplicate, Fourteenth record, Mr. Mario Mercado Montalvo, in his capacity as managing partner of the agricultural civil partnership Mario Mercado e Hijos, domiciled in Guayanilla, Puerto Rico, and moreover in his own right, conveyed to Mrs. Belen Gonzalez, widow of Tous, petitioner herein, in her own behalf and also as mother with *patria potestas* over her children, Then minors, Belen-Maria, Gladys and Jorge; and Hector Tous Gonzalez, Still a Minor, and as guardian of Jose Tous Gonzalez, incapacitated; Luz-Belen, Ana-Rosa, Celia and Alicia Tous Gonzalez, a mortgage credit constituted by public deed No. 13, executed in Mayaguez on March 23, 1932, before notary Fernando Zapater Martinez, acting in the place of Jose Tous Soto, by Mrs. Elvira Olivieri Commins, upon a jointly owned half interest in the immovables which are described as follows:

"Number One:—A piece of rural property known as 'Juanita' lying in the 'Pueblo and Quebrada' barrios within the judicial district of Guayanilla. It contains 481.77 cuerdas more or less, equivalent to 189 hectares, 35 ares and 45 centiares, partly flat land applied to sugar canes and partly hilly and wooded land. There is built thereon a dwelling frame house raised from the ground, with galvanized-iron roof, and a shed for storing produce. It is bounded on the north by land of Rafael Lopez, of the 'Rufina' plantation, belonging to Mario Mercado e Hijos, and the Heirs of Domingo Torres represented by Isabel Yordan; on the south by said 'Rufina' plantation; on the west by land of the 'San Rafael' plantation owned by the Heirs of Franceschi, by land of Andres Negroni and by land of Antonio Ramos. On the north (*sic*) by land of the latter, by land of the Heirs of Ramon Lopez, by land of Joaquin Lugo and by the road leading to 'Piedras Blancas' barrio, and on the opposite side by land of Antonio Llabres. Said estate is crossed by part of the railroad track.

"Number Two:—A piece of rural property known as 'Los Indios' lying in the 'Indios' barrio within the municipal district of Guayanilla, with an area of 430 cuerdas, equivalent to 169 hectares, 69 centiares, applied to sugar canes, pastures, saltpeter works and woods. There is built thereon a frame house, roofed with galvanized iron and in part with shingles; another frame house, peon quarters, a house for overseers and some other buildings. It is bounded on the north by the road leading from the 'Barina' barrio to the 'Indios' barrio, of Guayanilla, by land of the sugar cane plantation owned by Trujillo & Mercado, now Mario Mercado e Hijos, and by land of the Heirs of Juan Irizarry; on the east by land of Gabriel Garcia, by land of the Faro plantation owned at present by 'Mario Mercado e Hijos' and formerly by 'Trujillo Mercado & Company' and by mangroves of the maritime zone; on the south by the Yauco river and by land

of the 'Mercedes' plantation owned by Lluberas Hermanos, and on the west by land of Ulises Olivieri and by land of the Heirs of Antonio Perez.

"Whereas: It is likewise alleged that such mortgage was constituted to secure the payment of four promissory notes payable to bearer by indorsement and maturing all of them on March 23, 1939, subscribed by said Mrs. Elvira Olivieri Commins for the following amounts: Note No. One for $10,000.00 as principal, plus $2,700.00 for interest and $500.00 for costs; Note No. Two for $10,000.00 as principal, plus $2,700.00 for interest and $500.00 for costs; Note No. Three for $10,000.00 as principal, plus $2,700.00 for interest and $500.00 for costs, and Note No. Four for $11,256.89 as principal, plus $3,000.00 for interest and $500.00 for costs, such mortgage securing, besides the principal of the aforesaid notes, the sum of $11,100.00 for interest and $2,000.00 for costs, expenses, disbursements and attorney's fees in case of judicial recovery, which promissory notes were, by virtue of such deed of conveyance of mortgage credit, duly endorsed to the Heirs of Jose Tous Soto above mentioned.

"Whereas: It is further alleged that Mrs. Belen Gonzalez, widow of Tous, has an interest in such mortgage credit amounting to $21,256.89 and the balance, that is, the sum of $20,000.00 is distributed in equal shares among all her children of age and minors and therefore the minor Hector Tous Gonzalez and the incapacitated Jose Tous Gonzalez being entitled each, to $2,222.22-2/9; that the mortgagee, pursuant to clause 9 of the said mortgage deed, wherein it is provided that she may pay at any time before maturity the aforesaid mortgage credit, has applied for the cancellation of such mortgage, and such creditors as are of age are willing to cancel said credit, and have directed notary Fernando Zapater Martinez to proceed to draw up the proper deed.

"Whereas: After a hearing on this petition, with the ap-

pearance of the district attorney, each and every one of the particulars set forth were shown to the satisfaction of this court by means of documentary and oral evidence, the Honorable District Attorney having made a favorable report.

"Therefore: The court does hereby authorize Mrs. Belen Gonzalez Salicrup, widow of Tous, to appear before a notary and execute the proper deed of cancellation of mortgage as to the interests therein of the minor Hector Tous Gonzalez and the incapacitated Jose Tous Gonzalez and the amount of such interests in the principal of the aforesaid mortgage corresponding to the aforesaid minor and incapacitated, shall be deposited in the office of the clerk of this court, to be disposed of according to further orders of this court. Ponce, Puerto Rico, March 5, 1937.

(Sgd.) D. Sepulveda, District Judge."

I Do Hereby Certify that the Foregoing Is a True and Faithful Copy of Its Original which I have had in view for this cancellation, and I likewise certify to my personal knowledge of the appearing parties and in accordance with their statements I also certify to their personal characteristics. They assure me that they are in full possession of their civil rights and as they possess, in my opinion, the necessary legal qualifications for executing this deed, they set forth:

First:—The appearing parties make it known that the mortgage promissory notes referred to in the order of the district court above transcribe are in the possession of the appearing parties named Tous Gonzalez and Gonzalez Salicrup, widow of Tous, and different only in number and amount, they are as follows:

"No. For $. To become due . I promise to pay to the holder by indorsement of this promissory note on day, 193 , the sum of received to my entire satisfaction as a loan. This amount will bear interest at 9% annually until fully paid, payable semi-annually at the expiration of each semester. This is promissory note No.

, of a series of four, totalling $. To secure the above sum, $ for interest thereon and $ for costs, expenses, disbursements and attorney's fees I have executed a voluntary mortgage in favor of the holder by indorsement of said promissory notes in public deed No. 13 of even date before notary Fernando Zapater, acting in the place of Jose Tous Soto. upon a one-half interest belonging to me in two jointly owned estates, one of them called 'Juanita', with an area of 481.77 cuerdas more or less, lying in the Pueblo and Quebrada barrios of the municipal district of, Guayanilla, Puerto Rico, and the other called 'Los Indios' with an area of 430 cuerdas lying in the 'Indios' barrio of the municipal district of Guayanilla, Puerto Rico. Mayaguez, Puerto Rico, March 23, 1932.

(Sgd.) Elvira Olivieri.

Affidavit No. . Subscribed before me by Mrs. Elvira Olivieri Commins, of age, a divorcee, property owner, and domiciled in Yauco, Puerto Rico, whom I certify to know personally, in Mayaguez, Puerto Rico, on March 23, 1932.

(Sgd.) F. Zapater,
Notary Public.

(There is affixed thereto and cancelled a $0.25 internal revenue stamp and affixed thereto the notarial seal.)"

I do hereby certify that the foregoing is a true and faithful transcription of its original which I have had before me.

Second:—And the parties hereto having agreed upon the cancellation of the aforesaid mortgage, they proceed to such cancellation as follows:—

First

Mrs. Belen Gonzalez Salicrup, widow of Tous, states that she has received prior hereto, in her own behalf and having first secured the consent of all the parties named Tous Gonzalez, of age, a check for the sum of $36,812.43 on the Credito & Ahorro

Ponceno (Yauco branch), made out by Mr. M. Francisco Lluberas, and also that she has received, payable to the clerk of the district court for the judicial district of Ponce, another check on the same bank, made out by the same person, for $4,444.46, which latter sum represents the share of the minor Hector Tous Gonzalez and that of Jose Tous Gonzalez, incapacitated, of the aforesaid mortgage credit and which she has deposited in the office of the clerk of said court pursuant to the order transcribed, all the above items totalling $41,256.89, which represents the principal of the mortgage mentioned in the order of the District Court of Ponce already transcribed, whereby all the parties hereto give, as regards their respective rights and representations, a formal receipt and the fullest discharge and state that all the interest on said mortgage having been punctually satisfied, no sums being absolutely left unpaid on that score, thus relieving from all liability the partnership Mario Mercado e Hijos, which is the conveyor of such mortgage credit, as well as Mr. Mario Mercado Montalvo, personally by reason of the conveyance of the aforesaid mortgage constituted by deed No. 33, of May 9, 1933, before the attesting notary.

Second

By virtue of the terms of the foregoing clause, Mrs. Belen Gonzalez, in her own right and in the representation assumed by her herein, conformable to the order of the District Court for the Judicial District of Ponce already transcribed, Dona Luz-Belen, Dona Ana-Rosa, Dona Alicia, Doña Celia, Dona Belen-Maria, Dona Gladys and Don Jorge Tous Gonzalez, the first three parties with the express consent of their respective spouses Don Vicente Usera, Jr., Don Jose B. Carrion and Don Ignacio Maldonado, acknowledge as fully cancelled and extinguished the mortgage constituted by deed No. 13, dated March 23, 1932, executed before notary Jose Tous Soto, the attesting notary in said execution acting as a substitute, in favor of the partnersnip

Mario Mercado e Hijos, and conveyed subsequently to the parties hereto by said deed No. 33, dated May 9, 1933, before me, such cancellation to be recorded in the proper registry of property conformable to the wish and consent of the parties.

Third

Mrs. Belen González Salicrup, widow of Tous, has now delivered to me the four mortgage promissory notes in question to be cancelled, and I, the notary, proceeds to do so by writing on their face as follows:

"This promissory note has been cancelled by virtue of the cancellation of the deed of even date, in my presence. Ponce, Puerto Rico, March 8, 1937.

F. Zapater,
Notary Public."

After the foregoing proceeding I attach to the copy of this deed the aforesaid mortgage promissory notes so cancelled.

Fourth

The parties hereto accept the present deed as drafted as conformable to the agreement between them; and I, the notary, in compliance with the legal requirements advised them as to the legal and pertinent provisions concerning the execution. It is so stated and executed in my presence and that of the witnesses, legally qualified, domiciled in this city and known to me, Mr. Cesar Matos and Mr. Julio A. Lind.

After reading the present deed by the parties and the witnesses pursuant to their right as told by me, the former ratified their consent and all of them affixed their signatures before me, the notary, who certify to the contents of this public instrument and I further certify that in the execution of this deed all the legal

requisites of the Notarial Law have been complied with and the last amendment thereto regarding the initials of the parties.

(Sgd.) BELEN G. WIDOW OF TOUS SOTO.
CELIA TOUS.
JORGE TOUS.
GLADYS TOUS.
BELEN MARIA TOUS.
ANA ROSA TOUS DE CARRION.
J. B. CARRION.
I. MALDONADO.
ALICIA TOUS DE MALDONADO.
LUZ B. TOUS DE USERA.
V. USERA, Jr.

(Sgd.) JULIO A. LIND.
C. B. MATOS.

Signed, signeted, sealed and paraphed:

F. Zapater.

There are affixed hereto and cancelled the proper internal revenue stamps.

Initials: B.G.T.—C.T.—J.T.G.T.—B.M.T.—J.B.C.—A.R.T.C.—I.M.Q.—A.T.M.—L.B.T.U.—V.U., Jr.

It is a true and faithful copy of its original to which I refer and which, under the number indicated on the first page, is on file in my current protocol of public instruments in this, my notarial office. In witness whereof and at the request of Mrs. Elvira Oliv-ieri Commins I issue this copy which I sign, signet, paraph and seal in Ponce, Puerto Rico, on the same day of the same month and year of its execution.

(Sgd.) F. Zapater.

(There is affixed hereto the signet and paraph of said notary and the notarial seal is stamped on all its pages. There are affixed hereto and cancelled internal revenue stamps worth $4.70.)

(There is hereon the imprint of a rubber stamp with the fol-

lowing legend: "Presented: at 2:30 P.M. on this date for inclusion on folio 31 of Volume 188 of the Daybook, Ponce, P.R., March 10, 1937. The Registrar: (Sgd.) Miguel Planellas.")

(The seal of the Registry of Property is here duly stamped.)

(There is underneath a handwritten note reading as follows: "The proper cancellation is made where indicated on the margin of the description of each of the two estates referred to. Ponce, March 20, 1937. The Registrar: (Sgd.) Miguel Planellas.")

(There are affixed hereto and cancelled five internal revenue stamps worth $10.00 each; another worth $5.00, another worth $3.00 and another worth $0.50.)

(And there is lower down a note reading as follows: "Cancelled: five $10.00 stamps; one $5.00 stamp, one $3.00 stamp and another $0.50 stamp. No. 3 Schedule of Fees and Political Code. Dated as above. (Sgd.) Miguel Planellas.")

(On the margin of Estate No. One, there is a notice of the Registry of Property which reads as follows: "Volume 34, of Guayanilla, on the margin of the Twelfth Record of Estate No. 711 duplicate on folio 1.") The seal of the Registry is also stamped.

(On the margin of the description of property No. Two there is a notice of the Registry reading as follows: "Volume 36 of Guayanilla, back of folio 187, Estate No. 534 quadruplicate, Sixteenth Record."

The cover page has thereon the following legend:

> "Attorney Fernando Zapater Martinez—Attorney and Notary Public—No. 47—Deed of Cancellation of Mortgage—Executed by Mrs. Luz Belen Tous Gonzalez et als. in favor of Mrs. Elvira Olivieri Commins. March 8, 1937. In Ponce, Puerto Rico. Ponce, Puerto Rico."

EXHIBIT J OF THE PLAINTIFF.

VOLUNTARY MORTGAGE

No. 13

Mayaguez, Puerto Rico, March 23, 1932.

Before Me

Fernando Zapater Martinez, attorney and notary public for this Island, with residence, domicile and office in Ponce, Puerto Rico, acting in the place of my colleague Jose Tous Soto,—

There Appear

Mrs. Elvira Olivieri Commins, of age, single on account of divorce, property owner, domiciled in Yauco,—

Mr. Arturo Cortes y Valls, of age, married, an employee, domiciled in Guayanilla, Puerto Rico, who appears in the execution of the present deed in the name and representation of the agricultural civil partnership Mario Mercado e Hijos, domiciled in Guayanilla, by virtue of the powers granted to him by deed No. 39, executed before notary Jose Tous Soto, on February 16, 1927, which he will prove wherever and whenever necessary.

I certify to my personal knowledge of the parties hereto and to their personal characteristics as furnished by them. They assure me to be in the full enjoyment and exercise of their civil rights and in my opinion they possess the necessary legal qualifications for this execution. They state as follows:—

First:—That Mrs. Olivieri y Commins owns a one-half joint interest in the immovables described as follows:

Number One:—A piece of rural property known as "Juanita" lying in the "Pueblo and Quebrada" barrios within the municipal district of Guayanilla. It contains 481.77 cuerdas more or less, equivalent to 189 hectares, 35 ares and 45 centiares, partly flat land applied to sugar canes and partly hilly and wooded land. There is built thereon a dwelling frame house raised from the ground, with galvanized-iron roof, and a shed for storing pro-

duce. It is bounded on the north by land of Rafael Lopez, of the "Rufina" plantation belonging to Mario Mercado e Hijos, and the Heirs of Domingo Torres represented by Isabel Yordan; on the south by said "Rufina" plantation; on the west by land of the "San Rafael" plantation owned by the Heirs of Franceschi, by land of Andres Negroni and by land of Antonio Ramos. On the north (*sic*) by land of the latter, by land of the Heirs of Ramon Lopez, by land of Joaquin Lugo and by the road leading to "Piedras Blancas" barrio, and on the opposite side by land of Antonio Llabres. Said estate is crossed by part of the railroad track.

Title:—This estate was formed by a consolidation effected by deed No. 179, executed before notary Angel Padro, of Yauco, on November 28, 1907.

Number Two:—A piece of rural property known as "Los Indios" lying in the Indios barrio, within the municipal district of Guayanilla, with an area of 430 cuerdas, equivalent to 169 hectares, 69 centiares, applied to sugar canes, pastures, saltpeter works and woods. There is built thereon a frame house, roofed with galvanized iron and in part with shingles; another frame house, peon quarters, a house for overseers and some other buildings. It is bounded on the north by the road leading from the Barina barrio to the Indios barrio, of Guayanilla, by land of the sugar cane plantation owned by Trujillo & Mercado & Compania, now Mario Mercado e Hijos, and by land of the Heirs of Juan Irizarry; on the east by land of Gabriel Garcia, by land of the Faro plantation owned at present by Mario Mercado e Hijos and formerly by Trujillo Mercado & Compania and by mangroves of the maritime zone; on the south by the Yauco river and by land of the "Mercedes" plantation owned by Lluberas Hermanos, and on the west by land of Ulises Olivieri and by land of the Heirs of Antonio Perez.

Title:—This jointly owned interest was acquired by Mrs. Elvira Olivieri y Commins by inheritance from Josefa Commins y Raldiris and it is recorded in the Registry of Property in the

name of Mrs. Elvira Olivieri Commins on Folio 222 of Volume 12 of Guayanilla, Estate No. 534, First record.

Second:—That the estates above described are encumbered by a lease constituted in favor of Mario Mercado e Hijos by deed No. 55, executed on April 5, 1927, before notary Francisco Parra Capo, of Ponce.

Third:—Mrs. Elvira Olivieri Commins acknowledges to be indebted to the partnership Mario Mercado e Hijos in the sum of $41,256.89 by reason of a current account with liquidated interest up to March 23, 1932.

Fourth:—Mrs. Elvira Olivieri Commins has agreed to pay to the partnership Mario Mercado e Hijos the amount owed by her, as hereinafter expressed, and to that effect she executes:

First

Mrs. Elvira Olivieri Commins, in payment of the amount owed by her to the partnership Mario Mercado e Hijos, as stated in the preceding third paragraph, executes and delivers to said partnership through the attorney-in-fact, Arturo Cortes Valls, four promissory notes payable to bearer by endorsement, to fall due all of them on March 23, 1939, and subscribed by said lady for the following amounts:

Promissory note No. One for $10,000.00 as principal, $2,700.00 for interest thereon and $500.00 for costs.

Promissory Note No. Two for $10,000.00 as principal, $2,700.00 for interest thereon and $500.00 for costs.

Promissory note No. Three for $10,000.00 as principal, $2,700.00 for interest thereon and $500.00 for costs.

And promissory note No. Four for $11,256.89 as principal, $3,000.00 for interest thereon and $500.00 for costs.

Said promissory notes shall differ from each other only in their correlative numbers and amounts. They are as follows:

No. . For $. To become due . I promise to pay to the holder by indorsement of this promissory note on day, 193 , the sum of received to my entire satisfaction as a

loan. This amount will bear interest at 9% annually until fully paid, payable semi-annually at the expiration of each semester. This is promissory note No. , of a series of four, totalling $. To secure the above sum, $ for interest thereon and $ for costs, expenses, disbursements and attorney's fees I have executed a voluntary mortgage in favor of the holder by indorsement of said promissory notes in public deed No. 13 of even date before notary Fernando Zapater, acting in the place of Jose Tous Soto, upon a one-half interest belonging to me in two jointly owned estates, one of them called "Juanita", with an area of 481.77 cuerdas more or less, lying in the Pueblo and Quebrada barrios of the municipal district of Guayanilla, Puerto Rico, and the other called "Los Indios", with an area of 430 cuerdas, lying in the Indios barrio of the municipal district of Guayanilla, Puerto Rico. Mayaguez, Puerto Rico, March 23, 1932.

(Sgd.) ELVIRA OLIVIERI.

Affidavit No. . Subscribed before me by Mrs. Elvira Olivieri Commins, of age, a divorcee, property owner, and domiciled in Yauco, Puerto Rico, whom I certify to know personally, in Mayaguez, Puerto Rico, on March 23, 1932.

(Sgd.) F. Zapater,
Notary Public.

There is affixed thereto and cancelled a $0.25 internal revenue stamp and affixed thereto the notarial seal.

Second

Mrs. Elvira Olivieri Commins constitutes a voluntary mortgage upon her jointly owned interests in each of the estates above described to secure all and each of the promissory notes referred to in the foregoing clause, which lien shall encumber such condominiums until the mortgage hereby constituted is legally cancelled. Said mortgage will secure in addition to the principal of the aforesaid promissory notes, the sum of $11,100.00 for interest thereon and $2,000.00 for costs, expenses, disbursements and

attorney's fees in case of judicial recovery and demandable as a penalty in such event without the necessity of a liquidation.

Third

Mrs. Elvira Olivieri y Commins and Mr. Arturo Cortes y Valls, in behalf of the partnership Mario Mercado e Hijos, appraise the mortgaged condominiums, waiving any new appraisal or action for such purpose, as follows:

The jointly owned interest in the estate described in the first place at $25,000.00.

The jointly owned interest in the estate described in the second place at $50,000.00,

Fourth

Mrs. Elvira Olivieri Commins agrees with the partnership Mario Mercado e Hijos, that out of the rentals to which she is entitled under the contract of lease referred to in the second paragraph of said deed, that is, the sum of $4,100.00, said partnership shall retain, to be applied to the payment of the interest accrued, the sum required to cover the above amount, such retention to begin on June 2, 1932, and so on every time the same becomes due, that is, on March 4 and June 2 of each year.

Fifth

It is stipulated that by failing to pay three installments of interest upon becoming due, the obligor shall forfeit the right to avail herself of the term allowed for paying the principal and the obligee may recover judicially on all or either of the promissory notes by means of a summary or an ordinary action.

Sixth

If at the termination of the contract of lease referred to in paragraph second of this instrument, the mortgage promissory notes have not been paid, the obligor or her assignees or successors in interest bind themselves to impose upon any lessee the obligation to deduct from the rentals agreed upon the necessary sums for the payment of the interest owing to Mario Mercado e

Hijos and to effect such payment to said partnership on the account of the obligor, as stipulated in clause 4 of this deed.

Seventh

Option to Purchase and Sell and to Lease:—Notwithstanding the foregoing clause, the debtor, as part of the consideration of this contract, agrees with the partnership Mario Mercado e Hijos, so long as the mortgage credit herein constituted is not paid, to grant it priority to purchase and sell or lease her undivided joint interests in the estates "Indios" and "Juanita" upon the same price and terms. To this effect, the debtor shall advise, unless such mortgage credit is paid, by registered letter to Mario Mercado e Hijos, of any offer of sale or lease made to her and said partnership shall be granted thirty days for accepting or refusing such offer and during said period the debtor cannot sell or lease to anybody else. Should there be a sale or lease in violation of this agreement, Mario Mercado e Hijos shall be entitled to repurchase from the purchaser or lessee, which right it can exercise for thirty days from the record of such sale or lease for subrogating itself to the place, degree or priority of the purchaser or lessee.

Eighth

Waiver of Homestead. Mrs. Elvira Olivieri Commins states that no homestead right has been constituted by her on any of the estates hereinbefore described, but that should she do so in the future, from now on and for all time, she waives the same in favor of the partnership Mario Mercado e Hijos, its assignees or successors in interest, in consideration of the present contract and during the life thereof.

Ninth

It is stipulated by the parties that the obligor may pay at any time before maturity the mortgage credit herein constituted or may pay on account thereof any amount not below $5,000.00, provided she serves notice on the obligee three months prior to the time when she intends to effect the payment of the principal or the sum on account of such principal.

Tenth

The parties likewise expressly state that the lessor has received all back rentals up to date regarding the estate described and that in the present case she has received a check for $1,500.00 on the Banco de Ponce in settlement of the annual installment becoming due in the current month of March.

Eleventh

The parties likewise agree that the actual partition of said estates cannot be carried out without the consent of Mario Mercado e Hijos so long as the mortgage herein constituted is in force.

Twelfth

For the purpose of the Registry, the mortgage lien affecting the condominiums is prorated as follows:

The jointly owned interest in the estate described in the first place shall answer for:

The sum of $12,379.08 as principal,—

The sum of $3,330.00 as interest,—

The sum of $600.00 for costs.

And the jointly owned interest in estate No. Two shall answer for the sum of $28,877.81 as principal,—

The sum of $1,400.00 for costs, expenses and attorney's fees, and for interest on $7770.00

Thirteenth

All the expenses incurred by reason of the present deed, copy thereof and record in the Registry of Property and those of cancellation at the proper time, copy thereof and record shall be for the account of the obligor.

Fourteenth

Each of the parties hereto, as far as the same is concerned, agree to the present deed in every respect as conformable to the terms agreed upon.

It was so stated, executed and signed in the presence of wit-

nesses Jose Nadal Grau and Oscar Souffront, residents of this district, of age, qualified and known to me. This deed has been read by me to the parties and to the witnesses upon their waiving the right to do so themselves, which I warned them they could do, its contents was ratified by the parties and they and the witnesses affixed their signatures,—in witness whereof and of everything stated I, the notary, Certify. At this stage, it is set down by the parties that the sum referred to in the third paragraph of this deed as owed by Mrs. Elvira Olivieri Commins to the partnership Mario Mercado e Hijos amounting to $41,256.89, represents the total of the amount due up to date in every respect.

(Sgd.) ELVIRA OLIVIERI.
A. CORTES.
Dr. J. NADAL GRAU.
OSCAR SOUFFRONT.

Signed, signeted, sealed and paraphed:

F. Zapater.

There are affixed hereto and cancelled the proper internal revenue stamps. The parties affixed their signatures on the margin of each folio.

It is a true and faithful copy of its original and which, under the number indicated at the beginning, is on file in my current protocol of public instruments of the notarial office of my colleague Jose Tous Soto, in whose place I have acted due to his absence. In witness whereof and at the request of the interested party I issue this copy which I sign, signet, paraph and seal with the seal of this notarial office on the very day, month and year of its execution.

(Sgd.) F. Zapater.

There appears herein the paraph and signet of such notary as well as the notarial seal which is stamped on all its pages. There are affixed hereto and cancelled internal revenue stamps worth $5.80.

The cover page contains the following legend: "Jose Tous

Soto—Attorney and Notary Public—No. 13—Deed of Voluntary Mortgage—Executed in Mayaguez by Mrs. Elvira Olivieri y Commins and Mr. Arturo Cortes Valls on March 23, 1932—Ponce, Puerto Rico."

EXHIBIT K OF THE PLAINTIFF.

NOTARIAL ACT OF DEMAND

No. 7

Ponce, Puerto Rico, April 6, 1937.

Before Me

Pedro M. Porrata, Attorney and Notary Public for this Island, with domicile, residence and office in Ponce,—

There Appears

Mr. Mario Mercado Riera, of age, married, property owner, domiciled in Ponce, who appears herein in his capacity as assistant manager of the agricultural civil partnership "Mario Mercado e Hijos", domiciled in Guayanilla, Island of Puerto Rico, such partnership being constituted by public deed No. 36, dated July 13, 1916, as executed before notary Antonio F. Castro, extended and modified by another deed executed in Ponce, before notary Jose Tous Soto under No. 99, dated June 11, 1926, Mr. Mercado having duly proven his power for executing such deed.

I Certify to my personal knowledge of Mr. Mario Mercado Riera and of his personal characteristics as stated by him. He assures me to be in the full enjoyment and exercise of his civil rights and having in my opinion the necessary legal qualifications for this execution, states:—

First:—That by public deed No. 13, executed in Mayaguez, Puerto Rico, on March 23, 1932, before notary Fernando Zapater Martinez, acting in the place of Jose Tous Soto, Mrs. Elvira Olivieri Commins executed a voluntary mortgage upon the condominiums which will be next described, in order to secure four promissory notes payable to bearer by indorsement and to mature

all of them on March 23, 1939, for the following amounts: Note No. One for $10,000.00 as principal, plus $2,700.00 for interest and $500.00 for costs; Note No. Two for $10,000.00 as principal, plus $2,700.00 for interest and $500.00 for costs; Note No. Three for $10,000.00 as principal, plus $2,700.00 for interest and $500.00 for costs; and Note No. Four for $11,256.89 as principal, plus $3,000.00 for interest and $500.00 for costs, expenses, disbursements and attorney's fees in case of judicial recovery, which promissory notes were delivered at the time of such execution to the partnership Mario Mercado e Hijos, represented for such deed by its attorney-in-fact Mr. Arturo Cortes Valls.

One-Half Undivided Joint Interest in the Following Immovables:—

Number One:—A piece of rural property known as "Juanita" lying in the "Pueblo and Quebrada" barrios within the municipal district of Guayanilla. It contains 481.77 cuerdas more or less, equivalent to 189 hectares, 35 ares and 45 centiares, partly flat land applied to sugar canes and partly hilly and wooded land. There is built thereon a dwelling frame house raised from the ground, with galvanized iron roof, and a shed for storing produce. It is bounded on the north by land of Rafael Lopez, of the "Rufina" plantation, belonging to Mario Mercado e Hijos, and the Heirs of Domingo Torres represented by Isabel Yordan; on the south by said "Rufina" plantation; on the west by land of the "San Rafael" plantation owned by the Heirs of Franceschi, by land of Andres Negroni and by land of Antonio Ramos. On the north (*sic*) by land of the latter, by land of the Heirs of Ramon Lopez, by land of Joaquin Lugo and by the road leading to "Piedras Blancas" barrio and on the opposite side by land of Antonio Llabres. Said estate is crossed by part of the railroad track.

Number Two:—A piece of rural property known as "Los Indios" lying in the "Indios" barrio within the municipal district of Guayanilla with an area of 430 cuerdas, equivalent to 169 hectares, 69 centiares, applied to sugar canes, pastures, saltpeter

works and woods. There is built thereon a frame house, roofed with galvanized iron and in part with shingles; another frame house, peon quarters, a house for overseers and some other buildings. It is bounded on the north by the road leading from the Barina barrio to the Indios barrio, of Guayanilla, by land of the sugar cane plantation owned by "Trujillo & Mercado & Compania" now "Mario Mercado e Hijos", and by land of the Heirs of Juan Irizarry; on the east by land of Gabriel Garcia, by land of the Faro plantation owned at present by Mario Mercado e Hijos and formerly by "Trujillo Mercado & Compania" and by mangroves of the maritime zone; on the south by the Yauco river and by land of the "Mercedes" plantation owned by Lluberas Hermanos, and on the west by land of Ulises Olivieri and by land of the Heirs of Antonio Perez.

The above estates are respectively recorded in Volume 16 of Guayanilla, back of folio 24, estate No. 711, Twelfth record, and in Volume 33 of Guayanilla, folio 201, estate No. 534 triplicate, Fourteenth record.

Second:—That in the aforesaid mortgage deed a clause was inserted which literally transcribed reads as follows:

"Seventh:—Option to Purchase and Sell and to Lease. Notwithstanding the foregoing clause, the debtor, as part of the consideration of this contract, agrees with the partnership Mario Mercado e Hijos, so long as the mortgage credit herein constituted is not paid, to grant it priority to purchase and sell or lease her undivided joint interests in the estates Indios and Juanita upon the same price and terms. To this effect, the debtor shall advise, unless such mortgage credit is paid, by registered letter to Mario Mercado e Hios, of any offer of sale or lease made to her and said partnership shall be granted thirty days for accepting or refusing such offer and during said period the debtor cannot sell or lease to anybody else. Should there be a sale or lease in violation of this agreement, Mario Mercado e Hijos shall be entitled to repurchase from the purchaser or lessee, which right it can exercise for thirty days from the record of such sale or lease for subrogat-

ing itself to the place, degree or priority of the purchaser or lessee."

I Do Hereby Certify That the Above is a true and faithful copy of its original which I have kept before me during this proceeding.

Third:—That the estates hereinbefore described were actually partitioned by their co-owners Mrs. Elvira Olivieri Commins and Mrs. Santia Olivieri Commins by public deed No. 23 dated August 20, 1936, executed before notary Tomas Paz y Ruiz, there being allotted to Mrs. Elvira Olivieri Commins the following parcels and undivided joint interests segregated from the estates known as "Los Indios" as well as from the above described estate known as "Juanita" with her present area of 460.68 cuerdas, equivalent to 181 hectares, 6 ares and 57 centiares.

Segregated Parcels from the Estate "Los Indios" which were awarded to her:—

Full ownership of parcel No. One described in the fifth paragraph of the said deed of actual partition described as follows:

Rural Estate:—A parcel of land containing 79.46 cuerdas, equivalent to 31 hectares, 23 ares, 8 centiares, 79 miliares, lying in the Indios barrio within the municipal district of Guayanilla, which are subdivided in the following five parcels, which according to the plat of the survey made by engineer Juan Herminio Sanchez Diaz on December 5, 1935, are marked as follows: Parcel "A" with an area of 41.26 cuerdas known by the name of Cupey of flat land planted to sugar canes; Parcel "B" containing 4 cuerdas, of flat land, planted to sugar canes; Parcel "C" having 20.52 cuerdas of semiflat land at present planted to lesser crops; Parcel "D" containing 1.68 cuerdas of semiflat land planted to lessor crops; and Parcel "E" containing 12 cuerdas of semiflat land planted to lesser crops. The whole tract is bounded as follows: on the north by land of Santia Olivieri, the track of the American Railroad Company and from the west angle of Parcel "B" by the municipal road leading from Guayanilla to the Boca barrio; on the south by land of Arturo Lluberas and nephews, by

the Yauco river, by a 0.30-cuerda undivided parcel containing the pump and belonging to Santia and Elvira Olivieri Commins, and by land of Santia Olivieri; on the east by land of Santia Olivieri, and on the west by land of Mariano Lugo, by land of Ramon Ramirez, and by an old road which divided land of Ramon Lluberas, Luis Cervoni, Dolores Lopez and land of Luis Cervoni and on the southwest land of Arturo Lluberas and nephews. The fact is recorded that all along the east side there is a private road belonging to Santia and Elvira Olivieri, 6 meters wide, which proceeds along the west side of Parcel "B" as far as the undivided 0.30-cuerda parcel where the irrigation pump stands. Within this tract, but enclosed by said Parcel "C" there is a small parcel of land jointly owned by Santia and Elvira Olivieri with an area of 0.25 cuerda and there is built thereon a small house with a concrete foundation for a pump. And it is hereby explained that the aforesaid parcels marked letters "E" and "D" are separated, the former, partly on its east side, by the road leading from Guayanilla to Boca barrio and the latter by the railroad track, both in connection with Parcel "C", and the former is also separated in connection with the latter by the said railroad track. (*sic*)

Full Ownership of Parcel No. Two Described in Paragraph Fifth of the Aforesaid Deed, *viz.*:

Number Two:—Parcel of saltpeter land lying in the Indios barrio of the municipal district of Guayanilla and bounded: on the north by land of Mario Mercado e Hijos; on the south by a cano within the land of Santia Olivieri; on the east by the Caribbean Sea and on the west by a 6-meter wide road, three meters of which is part of this parcel and the other three meters part of the parcel of land belonging to Santia Olivieri. Its area is 41.99 cuerdas, equivalent to 16 hectares, 50 ares, 37 centiares and 7 miliares of saltpeter land.

A $50 Undivided Half Interest in the $100.00-Worth Parcel No. Four Described in the Fifth Paragraph of the Said Deed of Actual Partition, *viz.*:

Rural: Undivided parcel of land with an area of 0.30 cuerda, equivalent to 11 ares, 79 centiares and 12 miliares with a small house thereon fenced and roofed with galvanized iron, with a steam pump with every accessory and pipes for pumping water from the Yauco river for the irrigation of the estates belonging to Santia and Elvira Olivieri, situated in the Indios barrio of the municipal district of Guayanilla and bounded as follows: on the north by land belonging to Elvira Olivieri Commins; on the south by the Yauco river; on the east by land belonging to Santia Olivieri Commins and on the west by land belonging to Elvira Olivieri Commins.

A $175.00-Worth Interest in the Value of the Pump Standing on Said Parcel, Which Pump Was Appraised at $700.00.

A $50.00 Undivided Half interest in the $100.00-worth parcel No. Five of said paragraph fifth, *viz.*:

Rural: An undivided parcel of land measuring 0.25 cuerda, equivalent to 9 ares, 82 centiares and 60 miliares, possibly destined to have installed thereon a pump for drawing water from adjacent springs, with a cement foundation with a small house roofed and fenced with galvanized iron and pipes. This parcel of land is situated in the Indios barrio of the municipal district of Guayanilla and bounded as follows: on the north, west and east by Parcel "C" of the estate belonging to Elvira Olivieri Commins; and on the south by Parcel "A" known as Cupey from the same estate of Elvira Olivieri Commins.

Fourth: That according to public deed No. 40, executed before notary Luis Lopez de Victoria in Mayaguez on March 9, 1937, Mrs. Elvira Olivieri Commins sold to the spouses Mr. Manuel Francisco Lluberas Pasarell and Mrs. Hazel Kelis (*sic*) Lluberas, the former acting not only in his own behalf, but as the agent of Mrs. Antonia Lluberas Pasarell, widow of Dr. Carlos G. Armstrong; of Dona Rosa Elena Lluberas Pasarell; of Dona Graciela Lluberas Pasarell, married to Mr. Antonio Valenti Maestre; of Dona Celia Lluberas Pasarell, married to Mr. Emilio Blasini Totti, and of Dona Raquel Lluberas Pasarell, the immovables and

undivided joint interests which have been described in the foregoing third paragraph, and which were awarded to her in the actual partition above referred to, excluding from the said sale the estate known as Juanita above described, the purchase price of such sale being $40,000.00, the purchase price being distributed in the said deed of sale among the estates thus sold as follows:—The estate described under No. One in such deed was assessed at $35,000.00; the estate described under No. Two at $1,000.00; the estate described under No. Three at $2,000.00, that is, the undivided interest; and the undivided interest described under No. Four at $2,000.00, said purchasers acquiring each of them, share and share alike, an undivided joint interest in each of the immovables and condominiums involved in said contract of sale, there being included in said conveyance all the rights, uses, servitudes, joint interests in the irrigation pump, annexes and everything contained in and rights pertaining to said estates.

Fifth:—That in the said deed of sale, the mortgage constituted by Mrs. Elvira Olivieri Commins by deed No. 30, executed in Mayaguez, before notary Luis Lopez de Victoria and dated February 25, 1937, remained in force in favor of Mr. Manuel Francisco Lluberas and his wife only to the extent of $5,000.00 as principal, with interest thereon at 6% annually, payable at the end of every twelve months for five years, to mature on February 25, 1942, plus $200.00 for costs, expenses and attorney's fees in case of judicial recovery.

Sixth:—That by public deed No. 41, executed on March 9, 1937, before notary Luis Lopez de Victoria, Mrs. Elvira Olivieri Commins, leased to Mr. Emilio Blasini Totti, the estate known as Juanita for ten years to run from March 5, 1938 to March 5, 1948, at the rental of $3250.00 annually, payable in twelve monthly parts in advance, from March 5, 1938 on and during the life of the lease and under the other terms stated in detail in the said deed of lease.

Seventh:—Said Mario Mercado y Riera, in his capacity as assistant-manager of the partnership Mario Mercado e Hijos, has

delivered to me, now, the following amounts in U. S. legal tender, namely: $40,000.00 the purchase price of the immovables sold by virtue of deed No. 40 executed on March 9, 1937, before notary Luis Lopez de Victoria by Mrs. Elvira Olivieri Commins to the purchasers therein, above mentioned; the sum of $200.00 as the cost of the above deed of sale of the said immovables; the sum of $20.00 to pay the copy of the said deed and stamps cancelled thereon; the sum of $89.50 as fees of the registration of said deed and, moreover, the sum of $50.00 for any further incidental expenses not mentioned above, making a total of $40,359.50, in order that as an attorney I should request the spouses Manuel Francisco Lluberas Pasarell and Mrs. Hazel Kilis (*sic*) Lluberas, in their own rights, and, moreover, the former as the representative of said Mrs. Antonia Lluberas Pasarell; of Dona Rosa Elena Lluberas Pasarell; of Mrs. Graciela Lluberas Pasarell, married to Antonio Valenti Maestre; of Mrs. Celina Lluberas Pasarell, married to Emilio Blasini Totti, and Dona Raquel Lluberas Pasarell, to execute the proper deed of conveyance of the estates and condominiums sold and above described to the partnership Mario Mercado e Hijos, delivering to them the aforesaid sums, and in case of refusal on their part to make such conveyance, to advise them that the said amount of $40,359.50 will be deposited in the office of the clerk of the District Court of Ponce, I mean, in the hands of the clerk thereof in connection with the proper action that will be brought against them as purchasers; and likewise, said Mario Mercado y Riera requests me to summon Mrs. Elvira Olivieri Commins together with Mr. Emilio Blasini Totti and Mrs. Celia Lluberas Pasarell, who will also be served with notice of the notarial act of demand, to assign to the partnership Mario Mercado e Hijos the aforesaid contract of lease constituted by deed No. 41, executed on March 9, 1937, before notary Luis Lopez de Victoria, said partnership Mario Mercado e Hijos being ready to take over said contract of lease on the same terms and conditions upon which the said contract of lease was executed, said

partnership undertaking to furnish the proper bond, if required, to guarantee fully and faithfully the payment of the rentals to be accrued and, should they refuse, to properly assign said contract of lease, to caution them that the proper action against them will be brought in the District Court for the Judicial District of Ponce. I am further requested by Mr. Mario Mercado Riera, as assistant-manager of Mario Mercado e Hijos, to advise Mrs. Elvira Olivieri Commins that in case the mortgage deal for $5,000.00 which appears connected with said deed of purchase should be part of the consideration for such sale, that the partnership Mario Mercado e Hijos is ready to furnish her the amount borrowed from Mr. Manuel Francisco Lluberas Pasarell and to execute the proper mortgage under the same terms and stipulations contained in the aforesaid deed of sale and in deed No. 30, executed on February 25, 1937, before notary Luis Lopez de Victoria, *In re:* "Constitution of Mortgage".

It was so stated and executed in my presence and in that of the witnesses, legally qualified, domiciled in this city and known to me, Mr. Ulises Petrilli and Mr. Felix Neri Vazques.

The present Notarial Act having been read by Mr. Mario Mercado Riera and the witnesses in the exercise of their rights as advised by me, the former ratifies its contents and signs together with the witnesses before me, the notary, who certify to everything above stated as well as to the fact that in the execution of the present instrument all the requisites of the Notarial Law and its amendments have been complied with.

(Sgd.) MARIO MERCADO, Jr.
U. PETRILLI.
F. NERI VAZQUEZ.

Signed, signeted, sealed and paraphed:

Pedro M. Porrata.

There is affixed hereto and duly cancelled a $1.00 internal revenue stamp and the notarial seal stamped thereon.

RETURN OF THE SERVICE OF DEMAND UPON MRS. ELVIRA OLIVIERI COMMINS AS TO THE SALE AND LEASE.

In the city of Mayaguez, Island of Puerto Rico, and at 5:00 P.M. of April 6, 1937, I, Pedro M. Porrata, attorney and notary public, with my domicile, residence and office in the city of Ponce, and in accordance with the foregoing notice of demand, for which I was commissioned by Mr. Mario Mercado y Riera in his capacity as assistant-manager of the agricultural civil partnership Mario Mercado e Hijos, went to Mayaguez and at the domicile of Mr. Rafael Barleta, on the road from Mayaguez to Guanajibo barrio, within the municipal district of Mayaguez, Puerto Rico, served personally notice on Mrs. Elvira Olivieri Commins, and, in her presence and on even date, requested her, after having read fully and aloud the foregoing instrument, having delivered personally to her a true and faithful copy of the same and of this Notarial Act, pursuant to the terms of said Notarial Act of Demand, to proceed to execute a lease in favor of the partnership Mario Mercado e Hijos under the same terms and conditions stated in deed No. 40, executed on March 9, 1937, before notary Luis Lopez de Victoria, concerning the Juanita estate described in the said Notarial Act of Demand, and, as regards the four parcels of the estate Indios also described in the aforesaid Notarial Act of Demand, to proceed to subrogate the partnership Mario Mercado e Hijos to the place and priority at present enjoyed by the purchasers thereof, that is, Mrs. Hazel Kelly Lluberas and her husband Manuel Francisco Lluberas Pasarell, Mrs. Antonia Lluberas Pasarell, widow of Armstrong; Dona Rosa Elena Lluberas Pasarell; Mrs. Graciela Lluberas Pasarell, married to Mr. Antonio Valenti Maestre; Mrs. Celia Lluberas Pasarell, married to Mr. Emilio Blasini Totti and Dona Raquel Lluberas Pasarell.

I further advised Mrs. Elvira Olivieri Commins that I had in my possession the sum of $40,000.00 to pay the aforesaid purchasers the amount paid by them for the said parcels which make up the estate known as Indios and that I had also in my possession

the further sum of $2,000.00 to cover any justified disbursements made by Mrs. Elvira Olivieri Commins regarding the sale of the aforesaid estates Indios and Juanita.

In answer to the above request made by me, in my capacity as notary, in behalf of the partnership Mario Mercado e Hijos, Mrs. Elvira Olivieri Commins stated to me as follows: "As the mortgage conveyed by the partnership Mario Mercado e Hijos to the Heirs of Mr. Jose Tous Soto had been cancelled, I was no longer subject to any obligation towards the said partnership Mario Mercado e Hijos." As said Mrs. Elvira Olivieri Commins refused to receive the aforesaid amount of $40,000.00 and to execute the proper deed of conveyance of said sale and of such lease in favor of the partnership Mario Mercado e Hijos, I told her that there would be brought in the District Court for the Judicial District of Ponce, Puerto Rico, the proper action of conventional redemption and other particulars, and likewise I told her that such sum of $40,000.00 would be deposited in the office of the clerk of the District Court of Ponce, and as she refused to sign the present Notarial Act of Demand, I, the notary, proceed to sign the same in the presence of the witnesses, who also signed, Mr. Ulises Petrilli and Mr. Felix Neri Vazquez, to all of which, I, the notary, certify.

(Sgd.) U. PETRILLI.
F. NERI VAZQUEZ.

Signed, signeted, sealed and paraphed:

Pedro M. Porrata.

Service of demand upon Mr. Manuel Francisco Lluberas Pasarell and his wife Mrs. Hazel Kelly Lluberas, in his own behalf and as the attorney-in-fact of his sisters: Dona Antonia Lluberas Pasarell, Dona Rosa Elena Lluberas Pasarell, Dona Graciela Lluberas Pasarell, Dona Celia Lluberas Pasarell, and her husband Mr. Emilio Blasini Totti and Dona Raquel Lluberas Pasarell.

In the city of Yauco, Puerto Rico, Island of Puerto Rico, and at 10:30 P.M., on April 6, 1937—

I, Pedro M. Porrata, attorney and notary public, with my domicile, residence and office in the city of Yauco (*sic*), and in accordance with the foregoing notice of demand, for which I was commissioned by Mr. Mario Mercado y Riera in his capacity as assistant-manager of the agricultural civil partnership Mario Mercado e Hijos, went to Yauco, Puerto Rico, and at the domicile of Mr. Manuel Francisco Lluberas Pasarell, and his wife, Mrs. Hazel Kelly Lluberas, at "25 de Julio" street of said city of Yauco, Puerto Rico, and, in their presence and on even date, personally requested them, and I further personally requested Mr. Manuel Francisco Lluberas Pasarell in his capacity as attorney-in-fact of his sisters Dona Antonia Lluberas Pasarell, Dona Rosa Elena Lluberas Pasarell, Dona Graciela Lluberas Pasarell, Dona Celia Lluberas Pasarell and her husband Emilio Blasini Totti, and Dona Raquel Lluberas Pasarell, having first read fully and aloud the foregoing instrument, having delivered personally to them a true and faithful copy of the same and of this Notarial Act, by virtue of the terms of said Notarial Act of Demand, to proceed to execute, upon receipt of the sum of $40,359.50 made up as follows: $40,000.00 as the purchase price paid by them to Mrs. Elvira Olivieri Commins; $200.00 as notarial fees of the said deed of sale; $20.00 for a certified copy, including internal revenue stamps; $89.50 as registry's fees for the record thereof in the Registry of Property of Ponce, and $50.00 for any other disbursement that might have been made by them on account of said transaction, or to cover any error that might have been made by the partnership Mario Mercado e Hijos in estimating the whole sum, the proper deed of conveyance of the property sold by Mrs. Elvira Olivieri Commins, as evidenced by deed of sale No. 40 of March 9, 1937, executed before notary Luis Lopez de Victoria, of the estates mentioned in said Notarial Act of Demand.

I further requested Mr. Manuel Francisco Lluberas Pasarell to proceed, upon delivery to him of the sum of $5,000.00, to transfer to the partnership Mario Mercado e Hijos the mortgage credit for said amount constituted by Mrs. Elvira Olivieri Commins to Mr.

Manuel Francisco Lluberas Pasarell regarding the "Juanita" estate, as evidenced by deed No. 30 of February 25, 1937, and deed No. 40 of March 9, 1937, both executed before notary Luis Lopez de Victoria, which total sum of $45,359.50, I produce and tender to them in legal currency of the United States of America.

To this demand, served by me on them, they stated as follows:

I, Manuel Francisco Lluberas Pasarell, want to state that I am not the attorney-in-fact of my sisters Dona Antonia, Dona Rosa Elena, Dona Graciela, Dona Raquel and Dona Celia Lluberas Pasarell and her husband Emilio Blasini Totti, for the purpose to take action in their behalf in connection with the service of demand made on them; and further, that both in my behalf and in behalf of my wife, Dona Hazel Kelly Lluberas, I do not consent to the redemption because in our opinion Mario Mercado e Hijos is not entitled to the redemption which they seek to exercise.

And as the spouses Mr. Manuel Francisco Lluberas Pasarell and Mrs. Hazel Kelly Lluberas refused to take the $45,359.50 and to execute the proper instruments assigning thereby the deeds of sale and mortgage to Mario Mercado e Hijos, I informed them that there would be brought in the District Court for the Judicial District of Ponce, Puerto Rico, the proper action of conventional redemption and other particulars and I likewise informed them that said sum of $45,359.50 will be deposited in the office of the clerk of the District Court for the Judicial District of Ponce, at the disposal of the above parties, and Mr. Manuel Francisco Lluberas Pasarell therefore signed the present demand before the witnesses who also signed, and I, the notary, signed the same in the presence of said witnesses, Mr. Ulises Petrilli and Mr. Felix Neri Vazquez, to all of which, I, the notary, certify.

At this stage, and before proceeding to sign, the parties want to state that in answer to questions from the undersigned notary, Mr. Manuel Francisco Lluberas Pasarell stated as follows:

Q. "In regard to the representation, are you or are you not empowered by your sisters?

A. "I refuse to answer.

Q. "Could you tell us whether when appearing at the execution of deed No. 40, executed on March 9, 1937, before notary Luis Lopez de Victoria, you had it?

A. "I refuse to answer."

I, the undersigned notary, Again Attest.

(Sgd.) M. FRANCISCO LLUBERAS.
HAZEL KELLS LLUBERAS.
U. PETRILLI.
F. NERI VAZQUEZ.

Signed, signeted, sealed and paraphed:

Pedro M. Porrata.

Service of Demand Upon Mrs. Celia Lluberas Pasarell de Blasini.

In the town of Guanica, Island of Puerto Rico, at 10:00 A.M. of April 7, 1937.

I, Pedro M. Porrata, attorney and notary public, with domicile, residence and office in the city of Ponce, and pursuant to the foregoing demand, for which I was commissioned by Mr. Mario Mercado y Riera, as assistant-manager of the agricultural civil partnership Mario Mercado e Hijos, went to the town of Guanica and called at the domicile of Mrs. Celia Lluberas Pasarell, facing the Guanica Bay and being her present, in the same hour and date, personally requested her, after having read aloud the present deed and having delivered to her a true and faithful copy thereof and of this Demand, conformable to the terms of said Notarial Act of Demand, to proceed to execute, as far as she was concerned, upon receipt thereof the sum of $40,359.50, distributed as follows: $40,000.00 as the purchase price paid by her and the other purchasers of the parcels of land making up the estate Indios to Mrs. Elvira Olivieri Commins; $200.00 as notarial fees of the said deed of sale; $20.00 for her certified copy, including internal revenue stamps and $89.50 as fees of the record thereof in the Registry of Property and $50.00 to cover any other dis-

bursement that might have been made by her in connection with the said deals of sale of the four parcels which were parts of the estate known as Indios and with the lease of the estate known as Juanita, or for covering any error that might have been incurred by the partnership Mario Mercado e Hijos in determining the total amount, the proper deed of transfer of the deed of sale in her favor, for her share of the estates bought from Mrs. Elvira Olivieri Commins, as evidenced by deed No. 40, executed on March 9, 1937, before notary Luis Lopez de Victoria. Moreover, I insisted with said Mrs. Celia Lluberas Pasarell de Blasini that the partnership Mario Mercado e Hijos is ready and in a position to assume all and every one of the obligations personally assumed by her, as the lessee of the estate known as Juanita in the contract of lease executed before notary Luis Lopez de Victoria on March 9, 1937, and that, in turn, the partnership Mario Mercado e Hijos is ready to reimburse all the expenses incurred by said Mrs. Celia Lluberas Pasarell in the preparation of the papers required for such lease. That, likewise, the partnership Mario Mercado e Hijos is ready, and has furnished me with sufficient funds for the purpose of paying on the spot the amount paid by her in the aforesaid purchase of the parcels included in the estate known as "Indios", showing her again and counting in her presence, the sum of $42,000.00, which I had on me in legal tender of the United States of America, and counting, moreover, in her presence, the further sum of $5,000.00, which I also had with me, to be delivered to Mr. Manuel Francisco Lluberas Pasarell and to Mrs. Hazel Kelly Lluberas in the event that said people were ready to consent to the subrogation of the aforesaid partnership Mario Mercado e Hijos, as mortgagee, in the mortgage of $5,000.00, which the said Mr. Manuel Francisco Lluberas Pasarell and Mrs. Hazel Kelly Lluberas hold at present upon the said estate known as "Juanita", as evidenced by deed duly recorded in the Registry of Property.

Having served Mrs. Celia Lluberas Pasarell de Blasini with the present Notice of Demand, she stated as follows: "My

husband attends to my private business and any answer from him to this Notice of Demand is satisfactory to me and which I ratify beforehand."

Mrs. Celia Lluberas Pasarell de Blasini having expressed her will to me, and relying on the full power of her husband to act in her behalf and having refused to take the said sum of $40,359.50, or the portion corresponding to her of the purchase price paid by her and the other purchasers for the parcels which were parts of the estate Indios, and having also declared that she is not at all interested in the mortgage lien of $5,000.00 encumbering the estate Juanita, and having, moreover, refused therefore to execute the proper deed of conveyance of the parcels which form part of the estate Indios, described in the Notarial Act of Demand, and of the assignment of the lease regarding the estate Juanita, I advised her that in case of refusal to execute the aforesaid deed, the partnership Mario Mercado e Hijos will bring in the District Court for the Judicial District of Ponce, Puerto Rico, the proper action of conventional redemption and other particulars, and I likewise advised her that said sum of $40,359.50 and the further sum of $5,000.00 concerning the mortgage lien upon the estate Juanita, would be deposited in the office of the clerk of the District Court for the Judicial District of Ponce, Puerto Rico, at the disposal of the interested parties, and said Mrs. Celia Lluberas Pasarell having refused to sign the present Notice of Demand, I, the notary, proceeded to sign the same in the presence of the witnesses, who also signed, Mr. Felix Gonzalez and Mr. Armando Ramirez, to all of which, I, the notary, certify.

At this stage and before signing, I again requested Mrs. Celia Lluberas Pasarell de Blasini to execute a deed conveying, as to her share, to the partnership Mario Mercado e Hijos, the lease of the estate known as Juanita constituted by public deed No. 41 of March 9, 1937; and the sale deed of the four parcels of the estate Indios described in the Notarial Act of Demand, upon payment, by the partnership Mario Mercado e Hijos, of the amount paid by the same and of the notarial fees, I told her again that in the

event of refusal, an action would be brought, depositing in the District Court for the Judicial District of Ponce, Puerto Rico, the sum of $45,359.50, and she again answered that it could not be, and I, the notary, certify again.

(Sgd.) FELIX GONZALEZ.
ARMANDO RAMIREZ.
PEDRO M. PORRATA.

(Signed, signeted, sealed and paraphed.)

Service of Demand Upon Mr. Emilio Blasini y Totti.

In the city of Yauco, Puerto Rico, Island of Puerto Rico, at 3:15 of April 7, 1937, I, Pedro M. Porrata, attorney and notary public, with domicile, residence and office in the city of Ponce, Puerto Rico, and in accordance with the foregoing request made to me by Mr. Mario Mercado y Riera, as assistant-manager of the agricultural civil partnership Mario Mercado e Hijos, went to the town of Yauco and called at the residence of Mr. Luis Lopez de Victoria, in the presence of Mr. Emilio Blasini Totti, who was there, I personally demanded of him on this same date, having first read aloud and fully the foregoing Notarial Act and having delivered him a true and faithful copy thereof and of this demand, to proceed to execute, in accordance with the terms of said Notarial Act of Demand and upon receipt of the sum of $40,359.50, which I now produce and tender to him in legal currency of the United States of America, the proper assignment of the deed of sale executed to him by Mrs. Elvira Olivieri Commins, as evidence by deed No. 40 of March 9, 1937, executed before notary Luis Lopez de Victoria, regarding the properties mentioned in such deed. I also requested said Mr. Emilio Blasini Totti, in his own behalf and in that of his wife, to proceed to assign to Mario Mercado e Hijos the contract of lease which by deed No. 41 of March 9, 1937, Mrs. Elvira Olivieri Commins, as lessor, executed before the aforesaid notary in favor of the above lessee herein served and of his wife regarding the property described in the aforesaid deed and known as Juanita. In answer to the present

Demand served by me on him, in his own behalf and in that of his wife, pursuant to the latter's wish expressed when she was served by me with this Demand, he stated that he does not consent to such redemption because in his opinion Mario Mercado e Hijos is not entitled to the redemption sought.

Q.—"Is this answer to be understood therefore as applying to the lease of the Juanita estate as well as to the sale of the parcels making up the estate Indios? *A.*—Yes."

Upon the refusal of the spouses Mr. Emilio Blasini Totti and Mrs. Celia Lluberas Pasarell to take the said sum of $40,359.50 and to execute the proper assignment of said contract of sale and said lease to the partnership Mario Mercado e Hijos, I informed them that there would be brought in the District Court for the Judicial District of Ponce, Puerto Rico, the proper action of conventional redemption regarding the sale and the lease and other particulars, and I also informed them that the total of said amount would be deposited in the office of the clerk of the District Court of Ponce, at the disposal of the parties so served.

Upon their refusal to sign this Service of Demand, I, the notary, proceed to sign the same in the presence of the witnesses, who also sign: Mr. Francisco Brandi and Mr. Rafael F. Vidal, to all of which, I, the notary, certify. At this very moment, I, the notary, repeat the said demand and receive the same answer, to which I again certify.

(Sgd.) RAFAEL F. VIDAL.
FRANCISCO BRANDI.

Signed, signeted, sealed and paraphed:

Pedro M. Porrata.

There are affixed thereto and cancelled the proper internal revenue stamps.

This is a true and faithful copy of its original to which I refer and which, under the number indicated on top, is on file in the current protocol of public instruments in this my notary office.

In witness whereof and at the request of Mr. Mario Mercado Riera, I issue the present copy, which I sign, signet, paraph and seal in Ponce, P.R., on the same day, month and year of its execution, that is, on this the 7th day of April, 1937.

(Sgd.) Pedro M. Porrata.

(There is affixed hereto and cancelled a $0.50 internal revenue stamp and all its pages are stamped with the notarial seal.) Its cover page contains the following legend: "Attorney Pedro M. Porrata—Attorney and Notary Public—No. 7—Notarial Act of Demand—Executed by Mario Mercado Riera on 193 . Ponce, P. R."

EXHIBIT L OF THE PLAINTIFF.

In the District Court for the Judicial District of Ponce, Puerto Rico. Mario Mercado e Hijos, Plaintiff *v.* Elvira Olivieri Commins, Manuel Francisco Lluberas Passarell and his wife Hazell Kelly Lluberas, Antonia Lluberas Passarell, Rosa Elena Lluberas Passarell, Graciela Lluberas Passarell and her husband Antonio Valenti Maestre, Celia Lluberas Passarell and her husband Emilio Blasini Totti, and Raquel Lluberas Passarell, defendants. Civil Case No. 310. *In re:* Deposit of Money in Court.

COMPLAINT.

To the Honorable Court:

Now comes the plaintiff herein through its undersigned counsel before this Honorable Court and as its cause of action respectfully alleges:

1.—That the plaintiff, "Mario Mercado e Hijos", is an agricultural civil partnership with its domicile in Ponce, Puerto Rico.

2.—That the defendants are all of them above 21 years of age and domiciled as follows: Elvira Olivieri Commins in Mayaguez, Puerto Rico; Manuel Francisco Lluberas Passarell and his wife Hazell Kelly Lluberas and Antonia Lluberas Passarell in Yauco; Rosa Elena Lluberas Passarell, Graciela Lluberas Passarell and

her husband Antonio Valenti Maestre, and Raquel Lluberas Passarell in the City of New York, United States of America, and Celia Lluberas Passarell and her husband Emilio Blasini Totti in Ponce, Puerto Rico.

3.—That by public deed No. 13, executed on March 23, 1932, before notary Fernando Zapater Martinez, who acted in the place of notary Jose Tous Soto, recorded in the Registry of Property of Ponce, of which paper a literal copy is attached to this complaint and made part thereof, Mrs. Elvira Olivieri Commins executed and subscribed four promissory notes payable to holder by endorsement and dated March 23, 1932, the first three respectively in the sum of Ten Thousand Dollars as principal, Two Thousand Seven Hundred Dollars for interest thereon and Five Hundred Dollars for costs, expenses, disbursements and attorney's fees, and the fourth in the sum of Eleven Thousand Two Hundred and Fifty-Six Dollars and Eighty-Nine Cents as principal, Three Thousand Dollars for interest thereon and Five Hundred Dollars for costs, disbursements and attorney's fees, all of which to mature on March 23, 1939.

4. That in order to secure the above four promissory notes, defendant Mrs. Elvira Olivieri Commins by said deed No. 13 of March 23, 1932, executed before notary Mr. Fernando Zapater Martinez, who acted in the place of notary Jose Tous Soto, executed a voluntary mortgage on her undivided joint half interests in the following estates:

"Number One:—A piece of rural property known as Juanita lying in the Pueblo and Quberada barrios within the municipal district of Guayanilla. It contains 481.77 cuerdas more or less, equivalent to 189 hectares, 35 ares and 45 centiares, partly flat land applied to sugar canes and partly hilly and wooded land. There is built thereon a dwelling frame house raised from the ground, with galvanized-iron roof, and a shed for storing produce. It is bounded on the north by land of Rafael Lopez, of the Rufina plantation,

belonging to Mario Mercado e Hijos, and the Heirs of Domingo Torres represented by Isabel Yordan; on the south by said Rufina plantation; on the west by land of the San Rafael plantation owned by the Heirs of Franceschi, by land of Andres Negroni and by land of Antonio Ramos. On the north (*sic*) by land of the latter, by land of the Heirs of Ramon Lopez, by land of Joaquin Lugo and by the road leading to Piedras Blancas barrio, and on the opposite side by land of Antonio Llabres. Said estate is crossed by part of the railroad track.

"Number Two:—A piece of rural property known as Los Indios lying in the Indios barrio within the municipal district of Guayanilla with an area of 430 cuerdas equivalent to 169 hectares, 69 centiares, applied to sugar canes, pastures, saltpeter works and woods. There is built thereon a frame house, roofed with galvanized iron and in part with shingles; another frame house, peon quarters, a house for overseers and some other buildings. It is bounded on the north by the road leading from the Barina barrio to the Indios barrio, of Guayanilla, by land of the sugar cane plantation owned by Trujillo & Mercado, now Mario Mercado e Hijos, and by land of the Heirs of Juan Irizarry; on the east by land of Gabriel Garcia, by land of the Faro plantation owned at present by Mario Mercado e Hijos and formerly by Trujillo Mercado & Company and by mangroves of the maritime zone; on the south by the Yauco river and by land of the Mercedes plantation owned by Lluberas Hermanos, and on the west by land of Ulises Olivieri and by land of the Heirs of Antonio Perez."

5.—That in the third paragraph of the body of the said deed, Mrs. Elvira Olivieri Commins acknowledged to be indebted to the partnership Mario Mercado e Hijos in the sum of $41,256.89 arising from a liquidated current account at the time of the execution of the aforesaid deed, and in payment of which defendant

Mrs. Elvira Olivieri Commins endorsed and delivered to the partnership Mario Mercado e Hijos the four mortgage notes mentioned in paragraph 3 of the complaint and received and accepted by the latter.

6.—That defendant Mrs. Elvira Olivieri Commins and the partnership Mario Mercado e Hijos, by means of said deed No. 13 of March 23, 1932, executed before notary Fernando Zapater Martinez who acted in the place of notary Jose Tous Soto and as stated on its seventh and eleventh clauses, literally agreed the following:

"Seventh:—Option to Purchase and Sell and to Lease:—Notwithstanding the foregoing clause, the debtor, as part of the consideration of this contract, agrees with the partnership Mario Mercado e Hijos, so long as the mortgage credit herein constituted is not paid, to grant it priority to purchase and sell or lease her undivided joint interests in the estates Indios and Juanita upon the same price and terms. To this effect, the debtor shall advise, unless such mortgage credit is paid, by registered letter to Mario Mercado e Hijos, of any offer of sale or lease made to her and said partnership shall be granted thirty days for accepting or refusing such offer and during said period the debtor cannot sell or lease to anybody else. Should there be a sale or lease in violation of this agreement, Mario Mercado e Hijos shall be entitled to repurchase from the purchaser or lessee, which right it can exercise for thirty days from the record of such sale or lease for subrogating itself to the place, degree or priority of the purchaser or lessee.

"Eleventh:—The parties likewise agree that the actual partition of said estates cannot be carried out without the consent of Mario Mercado e Hijos so long as the mortgage herein constituted is in force."

7.—That by public deed No. 23 of May 9, 1933, executed before the aforesaid notary Fernando Zapater, the partnership

Mario Mercado e Hijos conveyed to the Heirs of Jose Tous Soto, made up of Belen Gonzalez de Tous, Belen Maria, Gladys, Jorge, Hector, Jose, Luz-Belen, Ana-Rosa, Celia and Alicja Tous y Gonzalez, the amount of the aforesaid mortgage credit of $41,256.89, and interest thereon not yet accrued, through the proper endorsement and delivery by the plaintiff to the aforesaid heirs of the four mortgage credits hereinbefore described.

8.—That at the time of the said conveyance of the four mortgage credits above mentioned to the Heirs of Jose Tous Soto, plaintiff Mario Mercado e Hijos stipulated with said heirs to reserve and it did reserve to itself the right of option to sell and repurchase as agreed upon by defendant Elvira Olivieri Commins and the plaintiff, pursuant to clause 7 hereinbefore transcribed of said deed No. 13 of March 23, 1932, before notary Fernando Zapater Martinez, as substitute of Jose Tous Soto.

9.—That by public deed No. 33 of August 20, 1936, executed before notary Tomas Paz Ruiz, recorded in the Registry of Property of Ponce, defendant Elvira Olivieri Commins and her sister Santia Olivieri Commins, as the sole joint owners, proceeded to the actual partition of the estates described in paragraph 4 of this complaint, there being allotted to said defendant Elvira Olivieri Commins, in satisfaction of her undivided joint interests in the said estates the parcels of land and condominiums described as follows:

One:—The whole estate known as Juanita described in No. 1 of the fourth averment of this complaint, with an area of 81.77 cuerdas of flat land and 378.91 cuerdas of hilly land.

Two:—Full ownership of a rural estate—a parcel of land containing 79.46 cuerdas, equivalent to 31 hectares, 23 ares, 8 centiares, 79 miliares, lying in the Indios barrio within the municipal district of Guayanilla, which are subdivided in the following five parcels, which, according to the plat of the survey made by engineer Juan Herminio Sanchez Diaz on

December 5, 1935, are marked as follows:—Parcel "A" with an area of 41.26 cuerdas known by the name of Cupey of flat land planted to sugar canes; Parcel "B" containing 4 cuerdas, of flat land, planted to sugar canes; Parcel "C" having 20.52 cuerdas of semiflat land at present planted to lesser crops; Parcel "D" containing 1.78 cuerda of semiflat land planted to lesser crops; and Parcel "E" containing 12 cuerdas of semiflat land planted to lesser crops. The whole tract is bounded as follows: on the north by land of Santia Olivieri, the track of the American Railroad Company and from the west angle of Parcel "D" by the Municipal road leading from Guayanilla to the Boca barrio; on the south by land of Arturo Lluberas and nephews, by the Yauco river, by a 0.30-cuerda undivided parcel containing the pump and belonging to Santia and Elvira Olivieri Commins, and with land of Santia Olivieri Commins; on the east by land of Santia Olivieri, and on the west by land of Mariano Lugo, by land of Ramon Ramirez, and by an old road which divided land of Ramon Lluberas, Luis Cervoni, Dolores Lopez and land of Luis Cervoni and on the southwest land of Arturo Lluberas and nephews. The fact is recorded that all along the estate there is a private road belonging to Santia and Elvira Olivieri, 6-meter wide, which proceeds along the west side of Parcel "B" as far as the undivided 0.30-cuerda parcel where the irrigation pump stands. Within this tract, but enclosed by said Parcel "C" there is a small parcel of land jointly owned by Santia and Elvira Olivieri with an area of 0.25 cuerda and there is built thereon a small house with a concrete foundation for a pump. And it is hereby explained that the aforesaid parcels marked letters "E" and "D" are separated, the former, partly on its east side, by the road leading from Guayanilla to Boca barrio and the latter by the railroad track, both in connection with Parcel "C", and the former is also separated in connection with the latter by the said railroad track. (sic).

Three:—Full ownership of a portion or parcel of saltpeter land lying in the Indios barrio of the municipal district of Guayanilla and bounded: on the north by land of Mario Mercado e Hijos; on the south with a cano within the land of Santia Olivieri; on the east by the Caribbean Sea and on the west by a 6-meter wide road, three meters of which is part of this parcel and the other three meters part of the parcel of land belonging to Santia Olivieri. Its area is 41.99 cuerdas, equivalent to 16 hectares, 50 ares, 37 centiares and 7 miliares of saltpeter land.

Four:—A $50.00 Undivided Half Interest in the following $100.00-worth parcel and a $175.00-worth interest in the value of the pump standing on said parcel, which pump was appraised at $700.00, described as follows; "Undivided parcel of land with an area of 0.30 cuerda, equivalent to 11 ares, 79 centiares and 12 miliares with a small house thereon fenced and roofed with galvanized-iron, with a steam pump with every accessory and pipes for pumping water from the Yauco river for the irrigation of the estates belonging to Santia and Elvira Olivieri, situated in the Indios barrio of the municipal district of Guayanilla and bounded as follows: on the north by land belonging to Elvira Olivieri Commins; on the south by the Yauco river; on the east by land belonging to Santia Olivieri Commins and on the west by land belonging to Elvira Olivieri Commins."

Five:—A $50.00 undivided half interest in the following $100.00-worth parcel: Rural: an undivided parcel of land measuring 0.25 cuerda, equivalent to 9 ares, 82 centiares and 60 miliares, possibly destined to have installed thereon a pump for drawing water from adjacent springs, with a cement foundation with a small house roofed and fenced with galvanized iron, and pipes. This parcel of land is situated in the Indios barrio of the municipal district of Guayanilla and bounded as follows; on the north, west and east by Parcel "C" of the estate belonging to Elvira Olivieri Com-

mins; and on the south by Parcel "A" known as Cupey from the same estate of Elvira Olivieri Commins.

10.—That in the said deed of partition of jointly owned property, mentioned in the foregoing paragraph, there appeared plaintiff Mario Mercado e Hijos and gave its consent to the said partition of jointly owned property.

11.—That prior to March 8, 1937, and on the best information and belief of plaintiff, the aforesaid defendant Elvira Olivieri Commins, as vendor, and the other defendants, as purchasers, while the option clause inserted in the mortgage deed of March 23, 1932, mentioned in paragraph 3 of this complaint was in force, conspired among themselves with the deliberate purpose of defrauding the plaintiff partnership Mario Mercado e Hijos of its right to exercise the right of redemption as agreed in clause 7 of the aforesaid deed No. 13 dated March 23, 1932, executed before notary Fernando Zapater Martinez, acting in the place of Jose Tous Soto, entered into a contract of sale of the estates and condominiums already described in paragraph 9 of this complaint, and marked with the numbers 2, 3, 4 and 5, the purchase price being $40,000.00, all the defendants having notice of the right of option held by plaintiff Mario Mercado e Hijos at the time of such sale in regard to said holdings.

12.—That on the day following, that is, March 9, 1937, said defendant Elvira Olivieri Commins, as vendor, and the other defendants, as purchasers, embodied in a public deed executed before notary Luis Lopez de Victoria the contract of sale entered into between them, and to which mention has already been made, said deed of sale having been presented for record in the Registry of Property of Ponce on March 10, 1937, and recorded on March 23, 1937.

13.—That neither defendant Elvira Olivieri Commins, nor any of the other defendants, nor anybody else in their behalf advised plaintiff Mario Mercado e Hijos prior to the time when the former agreed upon and executed the said contract of sale of the estates

and condominiums already described, or subsequent to such sale by registered letter or in any other way, the offer to buy for $40,000.00 the said properties made to said defendant Elvira Olivieri Commins by the other defendants, the partnership Mario Mercado e Hijos being informed of the execution of such contract of sale on March 10, 1937, by defendant Manuel Francisco Lluberas.

14.—That plaintiff, should it have been advised as to the said offer to buy prior to the execution of such sale, would have been ready, as it is now ready, to pay for the properties described under Nos. 2 and 3 of paragraph 9 of this complaint and for the condominiums described under Nos. 4 and 5 of said paragraph, the same purchase price paid by the defendant purchasers to the defendant vendor for the properties above described, to wit: $35,000.00 for the immovable described in No. 2; $1,000.00 for the parcel described under No. 3; and $2,000.00 for each of the condominiums described in Nos. 4 and 5 of said ninth paragraph of this complaint as well as all other necessary disbursements made by the defendants on account of such sale. Plaintiff alleges that it is ready to comply with each and everyone of the terms imposed on defendant purchasers by defendant vendor, by virtue and as the result of such contract of sale entered into between them in connection with the aforesaid holdings.

15.—That by public deed No. 30 of February 25, 1937, modified by deed No. 40 of March 9, 1937, both executed before notary Luis Lopez de Victoria, Mrs. Elvira Olivieri Commins constituted a voluntary mortgage in favor of Mr. Manuel Francisco Lluberas y Pasarell for $5,000.00 as principal, bearing interest at 6% annually, plus the sum of $200.00 for costs, expenses, disbursements and attorney's fees in case of foreclosure of immovable No. 1, described in paragraph 4 of this complaint, such mortgage lien to mature on February 25, 1942.

16.—That the plaintiff demanded by Notarial Act of defendants Mrs. Elvira Olivieri Commins, Mr. Manuel Francisco Lluberas Pasarell and his wife, Hazell Kelly Lluberas, Dona Antonia Lluberas Pasarell, Dona Graciela Lluberas Pasarell and her hus-

band Antonio Valenti Maestre, Mrs. Celia Lluberas Pasarell and her husband, Emilio Blasini Totti, and Dona Raquel Lluberas Pasarell, pursuant to deed No. 9, executed before notary Pedro M. Porrata on April 6, 1937, of which a certified copy is enclosed herewith and made part of this complaint, to reconvey to the plaintiff the estates and condominiums hereinbefore described in paragraph 9 of the present complaint and marked Nos. 2, 3, 4 and 5, upon payment by said plaintiff to said defendants of the following amounts which were tendered to them by the undersigned notary Pedro M. Porrata at the time of serving such Demand, in legal currency:

Amount of the purchase price paid by the defendants Lluberas Pasarell to Elvira Olivieri Commins for the estates and condominiums mentioned in paragraph 9, under Nos. 2, 3, 4 and 5	$40,000.00
Amount disbursed for the deed of sale	200.00
Internal revenue stamps for the copy	20.00
Recording thereof in the Registry of Property	89.50
Necessary disbursements unknown to plaintiff that may have been incurred by defendants	50.00
	$40,359.50

17.—That plaintiff likewise, by means of the Notarial Act of Demand mentioned in the foregoing allegation, and through notary Pedro M. Porrata, tendered to defendant Mrs. Elvira Olivieri Commins the sum of $5,000.00 in payment of the mortgage constituted by her in favor of defendant Mr. Manuel Francisco Lluberas Pasarell mentioned in the foregoing paragraph 15.

18.—That the aforesaid defendants so served, refused to take the amount mentioned in the foregoing two paragraphs of this complaint, and likewise, defendant Mr. Manuel Francisco Lluberas Pasarell refused to execute in favor of the plaintiff the proper assignment of his mortgage credit upon the estate Juanita described in paragraph 9 of this complaint under No. 1, and like-

wise, defendants Lluberas y Pasarell refused to execute the deed of conveyance in favor of plaintiff, in connection with the estates described and marked 2, 3, 4 and 5 in paragraph 9 of the present complaint, the undersigned notary Pedro M. Porrata having advised them in the name of the plaintiff partnership that the amount above mentioned would be deposited in legal tender of the United States in this Court, at the disposal of the aforesaid defendants.

By Virtue of the Foregoing we pray the Court to enter judgment with the following pronouncements:

(a) Declaring that the present deposit has been properly made.

(b) Adjudging such defendants as oppose this complaint to pay the costs, expenses, disbursements and attorney's fees.

Ponce, Puerto Rico, April 7, 1937.

PEDRO M. PORRATA,
FELIX OCHOTECO, Jr.;
Per: (Sgd.) Felix Ochoteco, Jr.,
Counsel for plaintiff.

OATH

I, Mario Mercado Riera, duly sworn, hereby declare:

That the above is my name, that I am of age, married, a resident of Ponce, Puerto Rico.

That I am assistant-manager partner of plaintiff Mario Mercado e Hijos, an agricultural civil partnership, domiciled in Ponce, Puerto Rico.

That each and every one of the facts alleged in the present complaint are known to me personally and the same are true except those alleged in paragraph 11 of said complaint which I believe to be true on information and belief.

Ponce, Puerto Rico, April 7, 1937.

(Sgd.) Mario Mercado, Jr., Affiant.

Affidavit No. 13783.

Sworn to and subscribed before me by Mario Mercado Riera, of age, married, assistant-manager and partner of the agricultural civil partnership Mario Mercado e Hijos, whom I know personally.

Ponce, Puerto Rico, April 7, 1937.

(Sgd.) Rafael Atiles Moreu,
Notary Public.

(There is affixed hereto and cancelled a $0.25 internal revenue stamp and the notarial seal of notary Rafael Atiles Moreu, and likewise, there are affixed at the top of this complaint and cancelled a $5.00 internal revenue stamp and the Bar Association Stamp. The following appears at the top: "Filed April 8, 1937 at 8:20 A.M." There appears here a sort of paraph or signature which is illegible.)

EXHIBIT M OF THE PLAINTIFF.

In the District Court for the Judicial District of Ponce, Puerto Rico. Mario Mercado e Hijos, Plaintiff *v.* Elvira Olivieri Commins, Manuel Francisco Lluberas Passarell and his wife Hazell Kelly Lluberas, Antonia Lluberas Passarell, Rosa Elena Lluberas Passarell, Graciela Lluberas Passarell and her husband Antonio Valenti Maestre, Celia Lluberas Passarell and her husband Emilio Blasini Totti, and Raquel Lluberas Passarell, Defendants. Civil Case No. 310. *In re:* Deposit of Money in Court.

AMENDED COMPLAINT.

To the Honorable Court:

Now comes the plaintiff herein through its undersigned counsel before this Honorable Court and as its cause of action respectfully alleges:

1. That the plaintiff, "Mario Mercado e Hijos", is an agricultural civil partnership with its domicile in Ponce, Puerto Rico.

2. That the defendants are all of them above 21 years of age

and domiciled as follows: Elvira Olivieri Commins in Mayaguez, Puerto Rico; Manuel Francisco Lluberas Passarell and his wife Hazell Kelly Lluberas and Antonia Lluberas Passarell in Yauco; Rosa Elena Lluberas Passarell, Graciela Lluberas Passarell and her husband Antonio Valenti Maestre, and Raquel Lluberas Passarell in the City of New York, United States of America, and Celia Lluberas Passarell and her husband Emilio Blasini Totti, in Ponce, P. R.

3. That by public deed No. 13 executed on March 23, 1932, before notary Fernando Zapater Martinez, who acted in the place of notary Jose Tous Soto, recorded in the Registry of Property of Ponce, of which paper a literal copy is attached to this complaint and made part thereof, Mrs. Elvira Olivieri Commins executed and subscribed four promissory notes payable to holder by endorsement and dated March 23, 1932, the first three respectively in the sum of Ten Thousand Dollars as principal, Two Thousand Seven Hundred Dollars for interest thereon and Five Hundred Dollars for costs, expenses, disbursements and attorney's fees, and the fourth in the sum of Eleven Thousand Two Hundred and Fifty-Six Dollars and Eighty-Nine Cents as principal, Three Thousand Dollars for interest thereon and Five Hundred Dollars for costs, disbursements and attorney's fees, all of which to mature on March 23, 1939.

4. That in order to secure the above four promissory notes, defendant Mrs. Elvira Olivieri Commins by said deed No. 13 of March 23, 1932, executed before notary Mr. Fernando Zapater Martinez, who acted in the place of notary Jose Tous Soto, executed a voluntary mortgage on her undivided joint half interests in the following estate:

> "Number One:—A piece of rural property known as Juanita lying in the Pueblo and Quebrada barrios within the municipal district of Guayanilla. It contains 481.77 cuerdas more or less, equivalent to 189 hectares, 35 ares and 45 centiares, partly flat land applied to sugar canes and partly hilly

and wooded land. There is built thereon a dwelling frame house raised from the ground, with galvanized-iron roof, and a shed for storing produce. It is bounded on the north by land of Rafael Lopez, of the Rufina plantation, belonging to Mario Mercado e Hijos, and the Heirs of Domingo Torres represented by Isabel Yordan; on the south by said Rufina plantation; on the west by land of the San Rafael plantation owned by the Heirs of Franceschi, by land of Andres Negroni and by land of Antonio Ramos. On the north (*sic*) by land of the latter, by land of the Heirs of Ramon Lopez, by land of Joaquin Lugo and by the road leading to Piedras Blancas barrio, and on the opposite side by land of Antonio Llabres. Said estate is crossed by part of the railroad track.

"Number Two:—A piece of rural property known as Los Indios lying in the Indios barrio within the municipal district of Guayanilla with an area of 430 cuerdas equivalent to 169 hectares, 69 centiares, applied to sugar canes, pastures, saltpeter works and woods. There is built thereon a frame house, roofed with galvanized iron and in part with shingles; another frame house, peon quarters, a house for overseers and some other buildings. It is bounded on the north by the road leading from the Barina barrio to the Indios barrio, of Guayanilla, by land of the sugar cane plantation owned by Trujillo & Mercado, now, Mario Mercado e Hijos, and by land of the Heirs of Juan Irizarry; on the east by land of Gabriel Garcia, by land of the Faro plantation owned at present by Mario Mercado e Hijos and formerly by Trujillo Mercado & Company and by mangroves of the maritime zone; on the south by the Yauco river and by land of Mercedes plantation owned by Lluberas Hermanos, and on the west by land of Ulises Olivieri and by land of the Heirs of Antonio Perez."

5. That in the third paragraph of the body of the said deed, Mrs. Elvira Olivieri Commins acknowledged to be indebted to the partnership Mario Mercado e Hijos in the sum of $41,256.89

arising from a liquidated current account at the time of the execution of the aforesaid deed, and in payment of which defendant Mrs. Elvira Olivieri Commins endorsed and delivered to the partnership Mario Mercado e Hijos the four mortgage notes mentioned in paragraph 3 of this amended complaint and received and accepted by the latter.

6. That defendant Mrs. Elvira Olivieri Commins and the partnership Mario Mercado e Hijos, by means of said deed No. 13 of March 23, 1932, executed before notary Fernando Zapater Martinez, who acted in the place of notary Jose Tous Soto and as stated on its seventh and eleventh clauses, literally agreed the following:

> "Seventh: Option to Purchase and Sell and to Lease.—Notwithstanding the foregoing clause, the debtor, as part of the consideration of this contract, agrees with the partnership Mario Mercado e Hijos, so long as the mortgage credit herein constituted is not paid, to grant it priority to purchase and sell or lease her undivided joint interests in the estates Indios and Juanita upon the same price and terms. To this effect, the debtor shall advise, unless such mortgage credit is paid, by registered letter to Mario Mercado e Hijos, of any offer of sale or lease made to her and said partnership shall be granted thirty days for accepting or refusing such offer and during said period the debtor cannot sell or lease to anybody else. Should there be a sale or lease in violation of this agreement, Mario Mercado e Hijos shall be entitled to repurchase from the purchaser or lessee, which right it can exercise for thirty days from the record of such sale or lease for subrogating itself to the place, degree or priority of the purchaser or lessee.
>
> "Eleventh: The parties likewise agree that the actual partition of said estates cannot be carried out without the consent of Mario Mercado e Hijos so long as the mortgage herein constituted is in force."

7. That by public deed No. 23 of May 9, 1933, executed before the aforesaid notary Fernando Zapater, the partnership Mario Mercado e Hijos conveyed to the Heirs of Jose Tous Soto, made up of Belen Gonzalez de Tous, Belen Maria, Gladys, Jorge, Hector, Jose, Luz-Belen, Ana-Rosa, Celia and Alicia Tous y Gonzalez, the amount of the aforesaid mortgage credit of $41,256.89, and interest thereon not yet accrued, through the proper endorsement and delivery by the plaintiff to the aforesaid heirs of the four mortgage credits hereinbefore described.

8. That at the time of the said conveyance of the four mortgage credits above mentioned to the Heirs of Jose Tous Soto, plaintiff Mario Mercado e Hijos stipulated with said heirs to reserve and it did reserve to itself the right of option to sell and repurchase as agreed upon by defendant Elvira Olivieri Commins and the plaintiff, pursuant to clause 7 hereinbefore transcribed of said deed No. 13 of March 23, 1932, before notary Fernando Zapater Martinez as substitute of Jose Tous Soto.

9. That by public deed No. 33 of August 20, 1936, executed before notary Tomas Paz Ruiz, recorded in the Registry of Property of Ponce, defendant Elvira Olivieri Commins and her sister Santia Olivieri Commins, as the sole joint owners, proceeded to the actual partition of the estates described in paragraph 4 of this amended complaint, there being alloted to said defendant Elvira Olivieri Commins, in satisfaction of her undivided joint interests in the said estates the parcels of land and condominiums described as follows:

One: The whole estate known as Juanita described in No. 1 of the fourth averment of this amended complaint, with an area of 81.77 cuerdas of flat land and 378.91 cuerdas of hilly land.

Two: Full ownership of a rural estate—a parcel of land containing 79.46 cuerdas, equivalent to 31 hectares, 23 ares, 8 centiares, 79 miliares, lying in the Indios barrio within the municipal district of Guayanilla, which are subdivided in the

following five parcels, which, according to the plat of the survey made by engineer Juan Herminio Sanchez Diaz on December 5, 1935, are marked as follows:—Parcel "A" with an area of 41.26 cuerdas known by the name of Cupey of flat land planted to sugar canes; Parcel "B" containing 4 cuerdas of flat land, planted to sugar canes; Parcel "C" having 20.52 cuerdas of semiflat land at present planted to lesser crops; Parcel "D" containing 1.78 cuerdas of semiflat land planted to lesser crops; and Parcel "E" containing 12 cuerdas of semiflat land planted to lesser crops. The whole tract is bounded as follows: on the north by land of Santia Olivieri, the track of the American Railroad Company and from the west angle of Parcel "D" by the municipal road leading from Guayanilla to the Boca barrio; on the south by land of Arturo Lluberas and nephews, by the Yauco river, by a 0.30-cuerda undivided parcel containing the pump and belonging to Santia and Elvira Olivieri Commins, and with land of Santia Olivieri and on the east by land of Santia Olivieri, and on the west by land of Mariano Lugo, by land of Ramon Ramirez, and by an old road which divided land of Ramon Lluberas, Luis Cervoni, Dolores Lopez and land of Luis Cervoni and on the southwest by land of Arturo Lluberas and nephews. The fact is recorded that all along the estate there is a private road belonging to Santia and Elvira Olivieri, 6-meters wide, which proceeds along the west side of Parcel "B" as far as the undivided 0.30-cuerda parcel where the irrigation pump stands. Within this tract, but enclosed by said Parcel "C" there is a small parcel of land jointly owned by Santia and Elvira Olivieri with an area of 0.25 cuerda and there is built thereon a small house with a concrete foundation for a pump. And it is hereby explained that the aforesaid parcels marked letters "E" and "D" are separated, the former, partly on its east side, by the road leading from Guayanilla to Boca barrio and the latter by the railroad track, both in connection with Parcel "C", and the

former is also separated in connection with the latter by the said railroad track. (*sic*)

Three: Full ownership of a portion or parcel of saltpeter land lying in the Indios barrio of the municipal district of Guayanilla and bounded: on the north by land of Mario Mercado e Hijos, on the south with a cano within the land of Santia Olivieri; on the east by the Caribbean Sea and on the west by a 6-meter wide road, three meters of which is part of this parcel and the other three meters part of the parcel of land belonging to Santia Olivieri. Its area is 41.99 cuerdas, equivalent to 16 hectares, 50 ares, 37 centiares and 7 miliares of saltpeter land.

Four: A $50.00 Undivided Half Interest in the following $100.00-worth parcel and a $175.00-worth interest in the value of the pump standing on said parcel, which pump was appraised at $700.00, described as follows: "Undivided parcel of land with an area of 0.30 cuerda, equivalent to 11 ares, 79 centiares and 12 miliares with a small house thereon, fenced and roofed with galvanized-iron, with a steam pump with every accessory and pipes for pumping water from the Yauco river for the irrigation of the estates belonging to Santia and Elvira Olivieri, situated in the Indios barrio of the municipal district of Guayanilla and bounded as follows: on the north by land belonging to Elvira Olivieri Commins; on the south by Yauco river; on the east by land belonging to Santia Olivieri Commins and on the west by land belonging to Elvira Olivieri Commins."

Five: A $50.00 undivided half interest in the following $100.00-worth parcel: Rural: an undivided parcel of land measuring 0.25 cuerda, equivalent to 9 ares, 82 centiares and 60 miliares, possibly destined to have installed thereon a pump for drawing water from adjacent springs, with a cement foundation with a small house roofed and fenced with galvanized iron, and pipes. This parcel of land is situated in the Indios barrio of the municipal district of Guayanilla and

bounded as follows: on the north, west and east by Parcel "C" of the estate belonging to Elvira Olivieri Commins; and on the south by Parcel "A" known as Cupey from the same estate of Elvira Olivieri Commins.

10. That in the said deed of partition of jointly owned property, mentioned in the foregoing paragraph, there appeared plaintiff Mario Mercado e Hijos and gave its consent to the said partition of jointly owned property.

11. That prior to March 8, 1937, and on the best information and belief of plaintiff, the aforesaid defendant Elvira Olivieri Commins, as vendor, and the other defendants, as purchasers, while the option clause inserted in the mortgage deed of March 23, 1932, mentioned in paragraph 3 of this amended complaint was in force, conspired among themselves with the deliberate purpose of defrauding the plaintiff partnership Mario Mercado e Hijos of its right to exercise the right of redemption as agreed in clause 7 of the aforesaid deed No. 13 dated March 23, 1932, executed before notary Fernando Zapater Martinez, acting in the place of Jose Tous Soto, entered into a contract of sale of the estates and condominiums already described in paragraph 9 of this amended complaint, and marked with the numbers 2, 3, 4 and 5, the purchase price being $40,000.00, all the defendants having notice of the right of option held by plaintiff Mario Mercado e Hijos at the time of such sale in regard to said holdings.

12. That on the day following, that is, March 9, 1937, said defendant Elvira Olivieri Commins, as vendor, and the other defendants, as purchasers, embodied in a public deed executed before notary Luis Lopez de Victoria the contract of sale entered into between them, and to which mention has already been made, said deed of sale having been presented for record in the Registry of Property of Ponce on March 10, 1937, and recorded on March 23, 1937.

13. That neither defendant Elvira Olivieri Commins, nor any of the other defendants, nor anybody else in their behalf advised

plaintiff Mario Mercado e Hijos prior to the time when the former agreed upon and executed the said contract of sale of the estates and condominiums already described, or subsequent to such sale by registered letter or in any other way, the offer to buy for $40,000.00 the said properties made to said defendant Elvira Olivieri Commins by the other defendants, the partnership Mario Mercado e Hijos being informed of the execution of such contract of sale on March 10, 1937, by defendant Manuel Francisco Lluberas.

14. That plaintiff, should it have been advised as to the said offer to buy prior to the execution of such sale, would have been ready, as it is now ready, to pay for the properties described under Nos. 2 and 3 of paragraph 9 of this amended complaint and for the condominiums described under Nos. 4 and 5 of said paragraph, the same purchase price paid by the defendant purchasers to the defendant vendor for the properties above described, to wit: $35,000.00 for the immovable described under No. 2; $1,000.00 for the parcel described in No. 3; and $2,000.00 for each of the condominiums described in Nos. 4 and 5 of said paragraph 9 of this amended complaint as well as all other necessary disbursements made by the defendants on account of such sale. Plaintiff alleges that it is ready to comply with each and everyone of the terms imposed on defendant purchasers by defendant vendor, by virtue and as the result of such contract of sale entered into between them in connection with the aforesaid holdings.

15. That by public deed No. 30 of February 25, 1937, modified by deed No. 40 of March 9, 1937, both executed before notary Luis Lopez de Victoria, Mrs. Elvira Olivieri Commins constituted a voluntary mortgage in favor of Mr. Manuel Francisco Lluberas y Pasarell for $5,000.00 as principal, bearing interest at 6% annually, plus the sum of $200.00 for costs, expenses, disbursements and attorney's fees in case of foreclosure of immovable No. 1, described in paragraph 4 of this amended complaint, such mortgage lien to mature on February 25, 1942.

16. That the plaintiff demanded, by Notarial Act, of defend-

ants Mrs. Elvira Olivieri Commins, Mr. Manuel Francisco Lluberas Pasarell and his wife Hazel Kelly Lluberas, Dona Antonia Lluberas Pasarell, Dona Graciela Lluberas and her husband Antonio Valenti Maestre, Mrs. Celia Lluberas Pasarell and her husband Emilio Blasini Totti and Dona Raquel Lluberas Pasarell, pursuant to deed No. 9, executed before notary Pedro M. Porrata on April 6, 1937, of which a certified copy is enclosed herewith and made part of this amended complaint, to reconvey to the plaintiff the estates and condominiums hereinbefore described in paragraph 9 of the present amended complaint and marked Nos. 2, 3, 4 and 5, upon payment by said plaintiff to said defendants of the following amounts which were tendered to them by the undersigned notary Pedro M. Porrata at the time of serving such Demand, in legal currency:

Amount of the purchase price paid by the defendants Lluberas Pasarell to Elvira Olivieri Commins for the estates and condominiums mentioned in paragraph 9, under Nos. 2, 3, 4 and 5	$40,000.00
Amount disbursed for the deed of sale	200.00
Internal revenue stamps for the copy	20.00
Recording thereof in the Registry of Property	89.50
Necessary disbursements unknown to plaintiff that may have been incurred by defendants	50.00
	$40,359.50

17. That plaintiff likewise, by means of the Notarial Act of Demand mentioned in the foregoing allegation, and through notary Pedro M. Porrata, tendered to defendant Mrs. Elvira Olivieri Commins the sum of $5,000.00 in payment of the mortgage constituted by her in favor of defendant Mr. Manuel Francisco Lluberas Pasarell mentioned in the foregoing paragraph 15.

18. That the aforesaid defendants so served, refused to take the amount mentioned in the foregoing two paragraphs of this amended complaint, and likewise, defendant Mr. Manuel Francisco Lluberas Pasarell refused to execute in favor of the plaintiff

the proper assignment of his mortgage credit upon the estate Juanita described in paragraph 9 of this amended complaint under No. 1, and likewise, defendants Lluberas y Pasarell refused to execute the deed of conveyance in favor of plaintiff, in connection with the estates described and marked 2, 3, 4 and 5 in paragraph 9 of the present amended complaint, the undersigned notary Pedro M. Porrata having advised them in the name of the plaintiff partnership that the amount above mentioned would be deposited in legal tender of the United States in this Court, at the disposal of the aforesaid defendants.

19. That the plaintiff has simultaneously filed in the office of the clerk of this Court an action for the rescission of sale and other particulars against Mrs. Elvira Olivieri Commins et als., alleging therein the facts above set forth and praying for the rescission of the sale embodied in deed dated March 9, 1937, executed before notary Luis Lopez de Victoria by Mrs. Elvira Olivieri Commins, as vendor, to the other co-defendants, as purchasers, and, moreover, to subrogate the partnership Mario Mercado e Hijos to the rights of the aforesaid defendant purchasers in the estates hereinbefore described and marked 2, 3, 4 and 5 in paragraph 9 of this amended complaint, and lastly to order said defendants (vendor and purchasers) to execute in favor of plaintiff the proper deed of the rescission of the immovables above described and the sale thereof.

20. That for the exclusive purpose of the aforesaid action for the rescission of sale and other particulars which have been filed in the office of the clerk of this Court under a number next to that of the present amended complaint, against the defendants herein upon the facts previously set forth, there is deposited, in connection with the present amended complaint, in the office of the clerk of this Court and at the disposal of the defendants, in legal tender of the United States, the sum of $45,359.50, to cover with it the $40,359.50 and the $5,000.00 referred to in the 16th and 17th paragraphs of the present amended complaint and for the purpose set forth in said allegations.

21. That the deposit of the aforesaid sum of $45,359.50 made by the plaintiff in the office of the clerk of this Court in the above entitled case, in favor of the defendants, is made exclusively for the purpose of enabling the plaintiff to exercise its right of redemption referred to in the complaint of the action for the rescission of the sale filed in the office of the clerk of this Court and has been marked with the number next to the one of the present amended complaint.

By Virtue of the Foregoing the plaintiff respectfully prays this Court to render judgment with the following pronouncements:

(a) Declaring that the deposit of money referred to in the present amended complaint has been properly made; declaring that said deposit of money is conditioned by and subject to the judgment that might finally be rendered in the action of redemption and other particulars filed by the plaintiff in the office of the clerk of this Court against the defendants in the present amended complaint.

(b) Granting to the plaintiff any other remedy congruent with the pleadings and the evidence to be adduced at the proper time, all of which in accordance with law.

San Juan, Puerto Rico, August , 1937.

PEDRO M. PORRATA
FELIX OCHOTECO, Jr.
Per: (Sgd.) Felix Ochoteco, Jr.,
Counsel for plaintiff.

Oath

I, Mario Mercado Riera, duly sworn, hereby declare:

That the above is my name, that I am of age, married, a resident of Ponce, Puerto Rico.

That I am assistant-manager partner of plaintiff "Mario Mercado e Hijos", an agricultural civil partnership, domiciled in Ponce, Puerto Rico.

That each and everyone of the facts alleged in the foregoing amended complaint are known to me personally and the same are

true except those alleged in the eleventh paragraph of said amended complaint which I believe to be true on information and belief.

Ponce, Puerto Rico, August 16, 1937.

(Sgd.) Mario Mercado, Jr., Affiant.

Affidavit No. 6175.

Sworn to and subscribed before me by Mario Mercado Riera, of age, married, assistant-manager and partner of the agricultural civil partnership "Mario Mercado e Hijos", whom I know personally.

Ponce, Puerto Rico, August 16, 1937.

(Sgd.) F. Zapater,
Notary Public.

Certificate of Service of Notice

I hereby certify that on even date and enclosed in a registered envelope I have mailed a true and faithful copy of this amended complaint to attorney Jose Sabater to his postal address in Mayaguez, Puerto Rico, and to attorney Luis Lopez de Victoria, whose postal address is in Yauco, Puerto Rico, and that between the above cities and the city of Ponce there is a regular daily mail service.

Ponce, Puerto Rico, August 16, 1937.

(Sgd.) Pedro M. Porrata.

There is affixed hereto and cancelled a $0.25 internal revenue stamp and the notarial seal duly stamped.

There is the file seal duly stamped evidencing that this amended complaint was filed at 1:38-1/2 P.M. of August 16, 1937.

EXHIBIT N OF THE PLAINTIFF.

Form 14-D. Tel.—Department of the Interior of Puerto Rico—Bureau of Insular Telegraph—Telegram Received at: c3 po ax rs 9:30 A.M. 11 paid—Playa Mayaguez—Jan. 23/36—Mario Mer-

cado e Hijos, Guayanilla. Received proposals through my son-in-law. Will answer next week through Rafael.—ELVIRA OLIVIERI—9:50 A.M.

EXHIBIT O-1 OF THE PLAINTIFF.

Form 14—D Tel.—Department of the Interior of Puerto Rico—Bureau of Insular Telegraph—Telegram Received at: c1 po gh rs 9:45 A.M. 13 paid Mayaguez Feb. 5/37—Mario Mercado e Hijos, Guayanilla.—Dona Elvira has not decided upon the business being still sick. Will let you know day next week.—BARLETA. 10:00 A.M.

EXHIBIT O-2 OF THE PLAINTIFF.

Form 14—D Tel.—Department of the Interior of Puerto Rico—Bureau of Insular Telegraph—Telegram Received at: c2poax rs 12poax rs 10:10 A.M. 3 paid—Mayaguez Feb. 10/37—Jose R. Peralta, Central Rufina, Guayanilla.—Will be there that morning. BARLETA. 10:20 A.M.

EXHIBIT O-3 OF THE PLAINTIFF.

Form 14—D Tel.—Department of the Interior of Puerto Rico—Bureau of Insular Telegraph—Telegram Received at: BIJVNCB 2:15 P.M. 11 Paid—Mayaguez Jan. 14/37—Mr. Jose R. Peralta—Central Rufina, Guayanilla.—Will explain personally reasons for failure to be present. Will be there Monday afternoon without fail. RAFAEL BARLETA—2:20 P.M.

EXHIBIT O-4 OF THE PLAINTIFF.

Form 14—D Tel.—Department of the Interior of Puerto Rico—Bureau of Insular Telegraph—Telegram Received at: c1 po gh rs 9:40 A.M. 3 paid—Mayaguez Feb. 18/37—Jose Peralta, Guayanilla. Will be there tomorrow morning. BARLETA. 10:15 A.M.

EXHIBIT O-5 OF THE PLAINTIFF.

Form 14—D Tel.—Department of the Interior of Puerto Rico—Bureau of Insular Telegraph—Telegram Received at C I PO GH CB 9:30 A.M. Paid—Mayaguez, January 9, 1937.—Jose R. Peralta, Manager Central Rufina, Guayanilla. Had to leave urgently for San Juan. Will be there Monday 4:00 P.M.—RAFAEL BARLETA —11:12 A.M.

EXHIBIT P OF THE PLAINTIFF.

Guayanilla, P. R. 1/14/37—Rafael Barleta, Mayaguez.—We suppose you failed to come yesterday as agreed upon for reasons beyond your control. Please inform us exact date we may expect you. CENTRAL RUFINA.

EXHIBIT Q OF THE PLAINTIFF.

Department of the Interior of Puerto Rico—Bureau of Insular Telegraph—Receiver's No. 4—Time Filed 9:52—Check 11 Pd. —Send the Following Message: Mario Mercado e Hijos, Central Rufina, Guayanilla.—Received proposals through my son-in-law. Will answer next week through Rafael. RAFAEL BARLETA. (This name has been crossed out and there is then the signature of:) ELVIRA OLIVIERI.—Name of Sender: B4JB HD 9:58 A.M. Address: (A rubber stamp has been stamped which reads: "Playa de Mayaguez—Jan. 23, 1937.")

EXHIBIT R OF THE PLAINTIFF.

Rafael Barletta — Manufacturers' representative — Mayaguez, Puerto Rico—Cable Address: "Colombia"—P. O. Box 193—Marina Sta.—December 15/36—Mr. Mario Mercado *hijo*, Guayanilla. My dear friend: In accordance with the conversation had by my son-in-law, Mr. Rafael Barletta, with the manager, Mr. Peralta, regarding my account with attorney Paz, concerning the papers relating to the partition of the parcels Juanita and Indios, you will oblige me by delivering a check in favor of Mr. Rafael

Barletta for $125.00 to be charged to my account in order to settle with attorney Paz. We will both be benefited to have these papers in proper shape. As soon as these holidays are over Don Rafael is going to talk business with you.

I avail myself of this opportunity to wish you and all your family a happy new year.

Thanking you with anticipation, I am

Yours truly,

(Sgd.) ELVIRA OLIVIERI.

Check in favor of Tomas Paz Ruiz to be charged to Elvira Olivieri on account of lease. No. 2058—$125.00

EXHIBIT S OF THE PLAINTIFF.

Cable Adress: "Colombia"—Rafael Barletta—Manufacturers' Representative—Mayaguez, Puerto Rico—P. O. Box 193—Marina Sta.—February 6/37. Messrs. Mario Mercado e Hijos, Guayanilla. (Exh. "S" of the plaintiff admitted over objection) My dear friend:

I confirm my telegram explaining that due to the illness of my mother-in-law I had not yet been able to have a final talk in order to dispatch the pending business. I expect next week to give you a final answer.

Owing to the fact that I have received a lot of goods necessitating payment of duties in the custom house I will ask you as a favor not to cash the check until Tuesday of next week, February 16.

I am very grateful to you for everything and hope to reciprocate. I am,

Yours truly,

(Sgd.) RAFAEL BARLETTA.

EXHIBIT T OF THE PLAINTIFF.

No. 41

CONTRACT OF LEASE

Mayaguez, Puerto Rico, March 9, 1937.

Before Me

Luis Lopez de Victoria, attorney and notary public for Puerto Rico, with my domicile and office in Yauco—

There Appear

As party of the first part: Mrs. Elvira Olivieri Commins, of age, a divorcee, property owner, domiciled in Mayaguez, Puerto Rico,—

As parties of the second part: The spouses Mr. Emilio Blasini y Totti and Mrs. Celia Lluberas Pasarell, of age, property owners, domiciled in Ponce, Puerto Rico.

I certify to my personal knowledge of the parties hereto and, as informed by them, to their being of age, married, to their occupations and domiciles. They assure me, and I believe them, to be legally qualified for this execution and by virtue whereof—

They State

Rural Estate

First: That Mrs. Elvira Olivieri Commins owns the following:

Rural: An estate known as "Juanita" lying in the Pueblo and Quebrada barrios of the municipal district of Guayanilla, Puerto Rico, with an area of 81.77 cuerdas of flat land applied to sugar canes and 378.91 cuerdas of wood and pasture land, and a water pump for irrigating said canes and a frame house with the galvanized-iron roof in poor condition. It is bounded on the north by land of the Heirs of Antonio Ramos, of Jesus Rodriguez, of Ricardo Rodriguez, of Dr. Jose Cobian, and of the Heirs of Lugo and a municipal road separating land partly of Mario Mercado e Hijos; on the south by land of Mario Mercado e Hijos and partly by a municipal road separating land of said concern, by land of

Santia de la Cruz de Pacheco, of Catalina Tirado and of Mario Mercado e Hijos; on the east by land of the aforesaid Mario Mercado e Hijos; on the northwest by land of the Heirs of Antonio Ramos and of Joaquin Diaz; and on the west by land of Joaquin Diaz, of Herminia Morales, and the woodland of the San Rafael plantation of the Heirs of Angela and Dario Franceschi; on the southwest by land of Mario Mercado e Hijos. This estate is crossed from south to the northwest by the tracks of the American Railroad Company of Puerto Rico. Its area is 460.68 cuerdas, equivalent to 181 hectares, 6 ares and 57 centiares.

Second: Mrs. Elvira Olivieri Commins acquired the immovable above described by reason of the dissolution of joint ownership, according to deed No. 73, executed on August 20, 1937, in Yauco, before notary Tomas Paz y Ruiz.

Lease

Third: Mrs. Elvira Olivieri Commins hereby leases to Mr. Emilio Blasini Totti the rural estate described in the first paragraph of this deed, with all its annexes, appurtenances, uses, servitudes, irrigation rights and other rights without any restriction whatever, said lease to be subject to the following clauses and terms:

A. Term of Lease. The term of the lease is ten years, which shall begin to run from March 5, 1938 and will expire on March 5, 1948.

B. Rental. The lease rental shall be $3,250.00 per annum payable in twelve monthly installments in advance from March 5, 1938 and so on during the life of this contract. The payment of the monthly installments may be effected by the lessee by certified check in favor of the lessor, mailed to her postal address by registered letter.

C. Out of this rental the lessee shall retain monthly one-twelfth of the amount of interest on the mortgage which encumbers the leased property in favor of Mr. Manuel Francisco Lluberas Pasarell whose rate of interest is 6% annually and whose

principal is the sum of $5,000.00, which mortgage was constituted by deed No. 30, executed on February 25, 1937, before me and modified by deed No. 40, executed on even date before me in Mayaguez, Puerto Rico.

The lessee shall pay the interest on the aforesaid mortgage to the mortgagee out of the sum retained from the rental. In the event of the mortgage being paid before the expiration of this contract of lease, then the lessee shall not retain anything from such rentals.

D. Taxes. The lessee binds himself to pay, besides the lease rents, the taxes upon the leased estate during the life of the present contract of lease.

E. Subleases. The lessee is empowered to sublease the leased property if he saw fit.

F. The lessee binds himself, with the diligence of a good farmer, to keep in good condition the fences and buildings of the leased property, making the necessary repairs for their preservation and endeavoring to keep them in good condition.

G. Improvements. The improvements made on the leased property shall remain for the benefit of its owner. Such improvements include the ratoons of the cane plantations.

H. Woods and Thickets. The lessee shall be entitled to exploit the woods and thickets of the estate, leaving shade trees for cattle and grazing.

I. Privilege. If at the expiration of the present contract there should still be on the estates canes to be cut, the lessee shall be entitled to a term of three months for cutting and carrying away such canes.

J. Disbursements. Any sums disbursed for improvements on the leased property, of whatever kind, as well as those required for obtaining any franchises, in the event that the lessee should seek any, shall be for the exclusive account of the lessee.

K. The lessee is empowered on his own account and at his own risk to seek and obtain an increase of the quota for the leased property, within the plans of the Federal Administration, and any

quota, if any, obtained by the lessee, shall remain for the benefit of the estate in the form in which said quota might exist at the termination of the present contract.

L. Inventory. The lessee or her lawful agents shall have the right to make inventory of all the annexes and appurtenances of the leased property one year prior to the termination of the present contract.

M. Special Stipulation. If on the day set for the payment of the lease rent such payment should not be effected, the lessee shall then notify, by registered letter, the lessor, of his default, and should said lessee fail to effect such payment within thirty days from such notification, the lessor may then proceed to take the proper legal steps.

N. Nonperformance. The nonperformance of any of the terms hereinbefore stipulated may not bring about the rescission of the present contract, but the lessor may be entitled to compensation for any costs, and injuries caused on that account.

N. The parties hereto consent to the recording of this contract in the proper Registry of Property to the prejudice of á third party.

O. The fees of this deed, certified copy and recording in the Registry of Property shall be for the account of the lessee.

Fourth: Mr. Emilio Blasini Totti and his wife Mrs. Celia Lluberas Pasarell become solidarily liable for the performance of all the obligations incumbent upon them by virtue of the present contract.

Fifth: The spouses Mr. Emilio Blasini Totti and Mrs. Celia Lluberas Pasarell consent to the present lease and all the parties hereto consent to the present deed. I, the notary, inform them as to their rights and duties under the law.

It was so executed before the present witnesses, of age, known to me, qualified as such and domiciled in Mayaguez, Puerto Rico, attorney Jose Sabater and Mr. Eduardo Muller.

Having informed them of their right under the law to read the present deed themselves, of which they avail themselves, the

parties hereto ratify its contents and sign the same, together with the witnesses, affixing, moreover, their respective initials to the other folios of this deed, as required by law.

To all of which, I, the notary, Certify.

The parties herein want to state as follows: That in the event of subleasing, the spouses, Mr. Emilio Blasini Totti and Mrs. Celia Lluberas Pasarell, become liable for and solidarily guarantee the lease rent until the termination of the contract. The parties and witnesses having been advised of the further stipulation, they approve the same, to which, I, the notary, Certify again.

(Sgd.) ELVIRA OLIVIERI.
EMILIO BLASINI.
CELIA LL. BLASINI.
JOSE SABATER.
EDUARDO MULLER.

(Signed, signeted, sealed and paraphed:)

Luis Lopez de Victoria.

There are affixed to the original copy and cancelled the proper internal revenue stamps.

This is a true and faithful copy of its original, deed No. 41, executed in Mayaguez, Puerto Rico on March 9, 1937, on file in my protocol of public instruments to which I refer. And at the request of Mr. Emilio Blasini Totti, I issue this copy on the same day of the execution of its original, leaving a note of the issuance of this copy.

(Sgd.) Luis Lopez de Victoria.

(There is affixed hereto the paraph and signet of said notary as well as the notarial seal and the following internal revenue stamps duly cancelled: $3.00 stamp; another $0.50 stamp and two $0.10 stamps. The notarial seal is stamped on all its pages as well as the paraph of the notary and the seal of the Registry of Property.) On the back thereof the following appears: "Cancelled one $0.50 stamp, No. 1 Schedule of Fees" and the $0.50

stamp is cancelled thereon. There is the imprint of a rubber stamp with the following legend: "Presented at 2:30 P.M. of even date for entry on folio 33 of Volume 186 of the Daybook. Ponce, Puerto Rico, March 10, 1937.

The Registrar (Sgd.) Miguel Planellas."

The seal of the Registry of Property is stamped hereon. (Lower down there is the following handwritten note: "This instrument is recorded on the back of folio 167 of Volume 36 of Guayanilla, Estate No. 711 triplicate, Record 16. This estate is encumbered by a lease in favor of the partnership Mario Mercado e Hijos which gave rise to Record 11, and by the mortgage in favor of Manuel Francisco Lluberas which gave rise to Records 14 and 15. Ponce, March 23, 1937.

The Registrar: (Sgd.) Miguel Planellas."

There are cancelled: 2 $10.00 stamps; one $3.00 stamp; another $1.00 stamp and another $0.50 stamp. No. 5 of the Schedule of Fees and Political Code. Dated *ut supra.*

(Sgd.) Miguel Planellas.

(There are affixed hereto and cancelled internal revenue stamps worth $24.50.)

The cover page of the same contains the following legend: "Luis Lopez de Victoria—Attorney and Notary Public—P. O. Box 114—Telephone 47—Copy of Deed No. 41—*In re:* Lease—Executed by Mrs. Elvira Olivieri Commins and the spouses Mr. Emilio Blasini Totti and Mrs. Celia Lluberas Pasarell.—March 9, 1937.—Mayaguez, Puerto Rico.

EXHIBIT U OF THE PLAINTIFF.

STATEMENTS MADE BY MRS. ELVIRA OLIVIERI COMMINS IN ANSWER TO QUESTIONS FROM ATTORNEY PORRATA ON THE OCCASION OF THE CALL MADE AT HER DOMICILE IN MAYAGUEZ.

There were present:

Mr. Ulises Petrilli, Mr. Felix Neri Vazquez, Mr. Jose R. Peralta, Mr. Pastor Mandry and Mr. Gilberto B. Sicardo, stenographer.

Attorney: We are reading to Mrs. Elvira Olivieri Commins the Notarial Act of Demand.

Q. Was the "Juanita" the estate which you lease? *A.* Yes, sir.

Q. Tell me Dona Elvira, when you sold the estate "Indios", were not you demanded to lease the "Juanita" estate to Millo? *A.* When Dona Elena offered me $40,000.00 for the "Indios" estate she asked me to lease her the "Juanita" estate, for the benefit of her daughters, all this as a special concession in the event that she should buy the property. I accepted because in my opinion it was a good business, and as I was almost with the rope to my neck, I was broken, as I could not help it . . . I also had my attorney . . .

Q. Who is your attorney? *A.* Sabater. Always when necessary he advises us.

Q. Cannot you remember whether this contract of sale was executed a month prior to March 9, 1937? *A.* I don't remember whether it was a month or twenty days . . . Well, I had already given my word. You know I am very honest and my word is always made good. In this I take after my father.

Q. Then, when you sold the "Indios" estate, was it on condition that you should lease the "Juanita" estate? *A.* Yes, sir. The "Juanita" estate. I had already given my word.

Q. Could you tell us the name of that person? *A.* Oh! That is my secret. I don't want to mention names.

Q. Could you tell us something further in connection with

said deal? *A.* If you want to know the details of that deal, why don't you go to the Registry?

(At this moment Dona Elvira personally reads clause 7 of the Notarial Act of Demand.)

Q. From that clause you can see that you were bound to notify the partnership Mario Mercado e Hijos in the event that you proceeded to sell said estates. *A.* Yes, indeed. I always preferred him . . . but as I was told that he was not in condition, rather that he was not interested in the property, my only recourse was to sell because I was in financial straights. I thought to send for my son who was in the United States, but as he had just married at that time, I did not want to mar his happiness by bringing him to Puerto Rico and live on an estate.

Q. And you . . .? Did you sell without notifying Mario Mercado regarding the proposition to purchase, as stipulated in this clause? *A.* Well, as I had been told that he was not interested in the property and in those days I had a bronchitis attack, I was in bed, and, moreover, I had already given my word . . .

Q. Who told you that? To whom did you give your word? *A.* Oh, well! That is a secret . . . I don't want to mention names. I was under obligation for the favor that I had received and I will not, for any worldly consideration, let anybody be injured who had done me a great favor.

Q. But Dona Elvira, if you had notified Don Mario regarding said proposal they would have bought the estate from you upon the same terms and conditions. *A.* I don't know. Rafael told me that he had gone to see Don Mario (Don Marito) and that the latter was rude to him, saying that he was not interested in the property and that he should go to till it, a thing of which I would not have thought Don Marito capable, because I always preferred them and I even used to say that I would always prefer him. When told about that I made up my mind to sell the "Indios" estate and I leased the "Juanita" estate as a special condition, otherwise they would not have bought. I hold those people in great esteem and I would not injure them for anything in the

world, and you see, had it not been for the quotas in question, they would have given me $50,000.00. The agreement was to sell one and to lease the other.

Q. And did you not notify the partnership Mario Mercado e Hijos in that respect? *A.* Well, as he did not want it I could not tell him anything . . .

Q. Were you present in all those deals and were you informed as to what was going on in connection with this matter? *A.* Not directly I myself. At that time I was sick, with bronchitis, I was coughing a lot, a very severe coughing, and Rafael took upon himself to do everything.

Q. At what price did you sell? *A.* At $40,000.00 and I repeat that had not it been for those blooming quotas they would have given me $50,000.00.

Q. Was that the sale? *A.* Yes, the sale. We effected the sale and received the $40,000.00 and proceeded to execute the deed; I had to pay for that deed. We needed cash to pay.

Q. And who else intervened in that deal? *A.* I commissioned Chito to act in the matter. He did quite right by me.

Q. Can you not remember more or less when it was agreed to sell the property? *A.* I cannot tell you exactly; it seems to me that it was at the time of Delgado's death. Oh, yes, I remember! It was about that time.

(Dona Elvira personally proceeds in her reading of clause 7 of said Notarial Act of Demand.)

Dona Elvira: I am entitled to be treated with consideration. I am a lady entitled to be treated with consideration.

(At this moment Dona Elvira's son turns up.) (Attorney Porrata explains to him the purpose of his visit.)

Doctor: Mama cannot answer your questions. I am a dentist by profession, I mean to say that I understand very little about your business and the old woman in legal matters does nothing unless she consults our attorney.

Attorney: Well, Dona Elvira, in order to comply with the law and the commission with which I have been charged, would you be

kind enough to tell me what you want me to set down as your answer to this Notarial Act of Demand?

Doctor: Mama, don't answer at all.

Dona Elvira: Don't you worry my son that where I fail nobody will succeed . . .

(Discussion between the doctor and attorney Porrata and Mr. Mandry.)

(The doctor realizes that all those statements are being taken down by a stenographer and requests that such note taking be discontinued right away.)

EXHIBIT 1 OF THE DEFENDANTS.

In The District Court for the Judicial District of Ponce, Puerto Rico,—Belen Gonzalez, Widow of Tous, Petitioner.—Ex-Parte.—No. 7850.—Utility and Necessity.

PETITION.

Now comes before this Court petitioner, Mrs. Belen Gonzalez, widow of Tous, through her undersigned attorney and respectfully states:

1. That petitioner is of age, a widow, property owner, domiciled in Ponce and is mother with *patria potestas* over her minor children Belen-Maria, Gladys, Jorge and Hector Tous y Gonzalez, who are 20, 19, 17 and 13 years old respectively, and guardian of Jose Tous y Gonzalez, incapacitated, to which office I was appointed by this Court, which appointment I accepted and has been entered in the proper registry of guardianship in this Court.

2. That by public deed No. 13 of March 23, 1932, executed before notary Fernando Zapater y Martinez, acting in the place of Jose Tous Soto, there was constituted by Mrs. Elvira Olivieri Commins a voluntary mortgage in favor of the partnership Mario Mercado e Hijos to secure the payment of four promissory notes payable to bearer by indorsement, to wit:

Promissory note No. 1 for $10,000.00 payable on March 23, 1939. Interest thereon $2,700.00. Costs $500.00.

Promissory note No. 2 for $10,000.00, payable on March 23, 1939. Interest thereon $2,700.00. Costs $500.00.

Promissory note No. 3 for $10,000.00, payable on March 23, 1939. Interest thereon $2,700.00. Costs $500.00.

Promissory note No. 4 for $11,256.89, payable on March 23, 1939. Interest thereon $3,000.00. Costs $500.00.

The amount of said mortgage was increased so as to cover $11,100.00 for interest and $2,000.00 for costs, expenses, disbursements and attorney's fees, the same to be constituted upon a joint half interest in the following immovables:

Number One:—A piece of rural property known as "Juanita" lying in the "Pueblo" and "Quebrada" barrios within the municipal district of Guayanilla. It contains 481.77 cuerdas more or less, equivalent to 189 hectares, 35 ares and 45 centiares, partly flat land applied to sugar canes and partly hilly and wooded land. There is built thereon a dwelling frame house raised from the ground, with galvanized iron roof, and a shed for storing produce. It is bounded on the north by land of Rafael Lopez, of the Rufina plantation, belonging to Mario Mercado e Hijos, and the Heirs of Domingo Torres represented by Isabel Yordan; on the south by said Rufina plantation; on the west by land of the San Rafael plantation owned by the Heirs of Franceschi, by land of Andres Negroni and by land of Antonio Ramos. On the north (*sic*) by land of the latter, by land of the Heirs of Ramon Lopez, by land of Joaquin Lugo and by the road leading to Piedras Blancas barrio, and on the opposite side by land of Antonio Llabres. Said estate is crossed by part of the railroad track.

Number Two: A piece of rural property known as "Los Indios" lying in the "Indios" barrio within the municipal district of Guayanilla with an area of 430 cuerdas, equivalent

to 169 hectares, 69 centiares, applied to sugar canes, pastures, saltpeter works and woods. There is built thereon a frame house, roofed with galvanized iron and in part with shingles; another frame house, peon quarters, a house for overseers and some other buildings. It is bounded on the north by the road leading from the Barina barrio to the Indios barrio, of Guayanilla, by land of the sugar cane plantation owned by Trujillo & Mercado & Compania, now Mario Mercado e Hijos, and by land of the Heirs of Juan Irizarry; on the east by land of Gabriel Garcia, by land of the Faro plantation owned at present by Mario Mercado e Hijos and formerly by Trujillo Mercado & Compania and by mangroves of the maritime zone; on the south by the Yauco river and by land of the Mercedes plantation owned by Lluberas Hermanos, and on the west by land of Ulises Olivieri and by land of the Heirs of Antonio Perez.

Said mortgage is recorded in the Registry of Property.

3. That the aforesaid Dona Belen-Maria, Dona Gladys, Don Jorge and Don Hector Tous y Gonzalez, and the incapacitated one, Jose Tous y Gonzalez, together with their major sisters, Luz-Belen, Ana-Rosa, Celia and Alicia Tous y Gonzalez, own an interest in the sum of $20,000.00 and have agreed with the partnership Mario Mercado e Hijos, actually the holder of the aforesaid mortgage and of the said mortgage notes, together with their mother, petitioner herein, Mrs. Belen Gonzalez, widow of Tous, to purchase the aforesaid mortgage of $41,256.89, with the sole and exclusive alteration of being paid interest at the rate of 8-1/4% annually, payable in monthly installments at the end of each month, which interest shall be paid by the partnership Mario Mercado e Hijos.

4. That likewise the partnership Mario Mercado e Hijos, which is an agricultural civil partnership with assets over $1,000,000.00, shall become a solidary surety of the principal and interest of the aforesaid mortgage, reserving to itself 3/4 of 1% of the annual

interest, as a consideration of the assumption by said partnership of the obligation to secure the principal and interest of such mortgage, as assigned, said interest to be paid monthly instead of semi-annually at the end of each semester, as agreed upon in the aforesaid notes.

5. The aforesaid notes are all of them drafted as follows:

No. . For $. To become due . I promise to pay to the holder by indorsement of this promissory note on day, 193 , the sum of received to my entire satisfaction as a loan. This amount will bear interest at 9% annually until fully paid, payable semi-annually at the expiration of each semester. This is promissory note No. , of a series of four, totalling $. To secure the above sum, $ for interest thereon and $ for costs, expenses, disbursements and attorney's fees I have executed a voluntary mortgage in favor of the holder by indorsement of said promissory notes in public deed No. 13 of even date before notary Fernando Zapater, acting in the place of Jose Tous Soto, upon a one-half interest belonging to me in two jointly owned estates, one of them called "Juanita", with an area of 481.77 cuerdas more or less, lying in the "Pueblo" and "Quebrada" barrios of the municipal district of Guayanilla, Puerto Rico, and the other, called "Los Indios", with an area of 430 cuerdas, lying in the "Indios" barrio of the municipal district of Guayanilla, Puerto Rico. Mayaguez, Puerto Rico, March 23, 1932.

(Sgd.) Elvira Olivieri.

Affidavit No. . Subscribed before me by Mrs. Elvira Olivieri Commins, of age, a divorcee, property owner, and domiciled in Yauco, Puerto Rico, whom I certify to know personally, in Mayaguez, Puerto Rico, on March 23, 1932.

(Sgd.) F. Zapater, Notary Public.

6. That this transaction is necessary and of utility and neces-

sity as regards said minors inasmuch as in this way they may be able to receive a steady monthly income.

7. That the proportion in which said mortgage credit shall be distributed is as follows: $21,256.89 to Mrs. Belen Gonzalez, widow of Tous—$20,000.00 to Luz-Belen, Ana-Rosa, Celia and Alicia Tous Gonzalez, of age,—Belen-Maria, Gladys, Jorge and Hector Tous Gonzalez, minors, and Jose Tous Gonzalez, incapacitated.

By Virtue of the Foregoing and on the ground of utility and necessity, we pray the Court to authorize the petitioner herein, Mrs. Belen Gonzalez, widow of Tous, in behalf of her minor children, Belen-Maria, Gladys, Jorge and Hector Tous Gonzalez and the incapacitated one Jose Tous y Gonzalez, to invest the respective shares of said minors and the incapacitated one of the aforesaid sum of $20,000.00 in acquiring the aforesaid mortgage, with the terms stated.

Ponce, Puerto Rico, May 4, 1933.

(Sgd.) F. ZAPATER,
Attorney for petitioner.

I, Belen Gonzalez, widow of Tous, solemnly swear: That I am the petitioner in the present case; that I have read the foregoing petition and that the facts therein stated are true and of my own knowledge.

(Sgd.) BELEN G., widow of Tous Soto

Sworn to and subscribed before me by Dona Belen G., widow of Tous, of age, property owner, domiciled in Ponce, whom I certify to know in Ponce, Puerto Rico, May 5, 1933.

(Sgd.) A. Maldonado,
Deputy Clerk District Court of Ponce, P. R.

Served with copy this 5th day of May, 1933.

(Sgd.) R. V. Perez Marchand,
District Attorney.

(There is affixed hereto and cancelled a $5.00 internal revenue stamp and the file seal duly stamped.)

In the District Court for the Judicial District of Ponce, Puerto Rico.—Belen Gonzalez, Widow of Tous, Petitioner.—Ex Parte—Utility and Necessity—No. 7850.

Affidavit

I, Belen Gonzalez, widow of Tous, Do Solemnly Swear:

That I am of age, widow of Mr. Jose Tous Soto, property owner and domiciled in Ponce.

That I am the mother with *patria potestas* over my minor children Belen-Maria, Gladys, Jorge and Hector Tous y Gonzalez, 20, 19, 17 and 13 years old respectively, and guardian of the incapacitated one, Jose Tous y Gonzalez, to which office I was appointed by the District Court of Ponce, Puerto Rico, having accepted and taken the oath of office and entered the appointment on the registry of guardianship of this Court.

That I have closed a deal with the agricultural civil partnership Mario Mercado e Hijos for the acquisition of a mortgage credit in favor of said partnership constituted by Mrs. Elvira Olivieri Commins by public deed No. 13 of March 23, 1932, before notary Fernando Zapater y Martinez, acting in the place of my deceased husband, attorney José Tous Soto, to secure the payment of four promissory notes as follows: promissory notes 1, 2, 3 for the sums of $10,000.00 as principal, $2,700.00 for interest and $500.00 for costs, disbursements and attorney's fees each; and promissory note 4, for the sums of $11,256.89 as principal, $3,000.00 for interest and $500.00 for costs, all of them to mature on March 23, 1939, which mortgage was constituted upon a one-half joint interest in two rural estates known as "Juanita", lying in the "Pueblo" and "Quebrada" barrios of the municipal district of Guayanilla, with an area of 481 cuerdas, and another known as "Los Indios", lying in the "Indios" barrio of the municipal district of Guayanilla, with an area of 430 cuerdas.

That more than 200 cuerdas of said estates are planted to sugar canes and are leased to the agricultural civil partnership Mario Mercado e Hijos at a lease rent totalling $8,200.00.

That I will contribute to the purchase price of such mortgage credit the sum of $21,256.89 and the balance, namely, $20,000.00 will be contributed by my aforesaid minor children, the incapacitated one Jose Tous Gonzalez and my major children Luz-Belen Tous de Usera, Ana-Rosa Tous de Carrion, Celia and Alicia Tous y Gonzalez.

That the rate of interest agreed upon on such mortgage is 9% annually, payable semi-annually at the end of each semester.

That pursuant to the above business deal, the partnership Mario Mercado e Hijos will pay us interest at the rate of 8-1/4% annually, during the life of the mortgage which will mature on March 23, 1939, said interest payable monthly at the end of each month.

That although the rate of interest agreed upon is 9% annually, as appears from said mortgage, in consideration of the fact that the agricultural civil partnership Mario Mercado e Hijos assumes the obligation to pay the interest monthly, at the end of each month, and assumes the obligation of becoming a surety in *solidum*, both for the principal and interest, until fully paid, I have agreed with said partnership Mario Mercado e Hijos that it shall pay only 8-1/4% annually and shall retain 3/4% annually thereof.

That I estimate said estates to be worth, from information given me by experts, more than $200,000.00, and that the rights of my minor children and the incapacitated one, Jose Tous y Gonzalez, shall be fully secured by the mortgage on said estates, but that they will be further secured by the obligation assumed by the partnership Mario Mercado e Hijos, which is an agricultural civil partnership of great moral solvency, with a capital above $2,000,000.00.

That all my major children consent to the carrying out of such deal.

That the aforesaid mortgage credit is duly recorded in the Registry of Property and that the aforesaid estates are not encumbered by any other charge, lien or annuity of any kind whatever.

That my minor children Belen-Maria, Jorge and the incapacitated one, Jose Tous y Gonzalez, are absent from this city of Ponce, unable to return to such city and therefore cannot give their consent to this transaction.

Ponce, Puerto Rico, May 5, 1933.

(Sgd.) BELEN G., widow of Tous Soto.

Sworn to and subscribed before me by Mrs. Belen Gonzalez, widow of Tous, of age, property owner and domiciled in Ponce, whom I certify to know personally.

Ponce, Puerto Rico, May 5, 1933.

(Sgd.) A. Maldonado,
Deputy Clerk District Court of Ponce, P. R.

In the District Court for the Judicial District of Ponce, Puerto Rico.—Belen Gonzalez, Widow of Tous, Petitioner.—Ex Parte—No. 7850—Utility and Necessity.

Affidavit

I, Gladys Tous y Gonzalez, Do Solemnly Swear:

That I am over 14 years of age, domiciled in Ponce; that I am acquainted in detail with the deal closed by my mother and my major sisters, with the partnership Mario Mercado e Hijos regarding the acquisition by us of a mortgage credit for $41,256.89, constituted by public deed No. 13 of March 23, 1932, executed before notary Fernando Zapater Martinez, acting in the place of Jose Tous Soto, in favor of the aforesaid partnership by Mrs. Elvira Olivieri Commins. That I am an interested party in said deal, that I consent to the same and give my absolute approval and consent for such transaction.

Ponce, Puerto Rico, May 5, 1933.

(Sgd.) GLADYS TOUS.

Sworn to and subscribed before me by Miss Gladys Tous y Gonzalez, over 14 years of age, domiciled in Ponce, whom I certify to know personally.

Ponce, Puerto Rico, May 5, 1933.

(Sgd.) A. Maldonado,
Deputy Clerk District Court of Ponce.

(The file dating stamp has been duly stamped.)

In the District Court for the Judicial District of Ponce, Puerto Rico.—Belen Gonzalez, Widow of Tous, Petitioner.—
No. 7850—Utility and Necessity.

Affidavit

We, Luz-Belen Tous de Usera, Celia and Alicia Tous Gonzalez, Do Solemnly Swear:

That we are over 25 years of age, domiciled in Ponce.

That we are acquainted with the deal closed between ourselves and our mother, Mrs. Belen Gonzalez Salicrup, with the agricultural civil partnership Mario Mercado e Hijos for the acquisition of a mortgage credit for $41,256.89, constituted by deed No. 13 of March 23, 1932, executed before notary Fernando Zapater Martinez, acting in the place of Jose Tous Soto, in favor of the aforesaid partnership by Mrs. Elvira Olivieri Commins upon a one-half joint interest in two estates lying within the municipal district of Guayanilla, Puerto Rico, belonging to said Mrs. Elvira Olivieri Commins.

That said estates are worth more than $200,000.00, a large part thereof being planted to sugar canes.

That the value of said joint interests greatly exceeds the amount of the loan secured by the mortgage thereon.

That we understand that such transaction is one of utility and necessity, both as regards ourselves and as regards our minor brothers and sisters and the incapacitated one, Jose Tous Gonzalez, not only on account of the actual security constituted by

said jointly owned interest, but also by reason of the solidary security furnished by the partnership Mario Mercado e Hijos.

Ponce, Puerto Rico, May 5, 1933.

(Sgd.) LUZ-BELEN TOUS DE USERA
(Sgd.) CELIA TOUS GONZALEZ
(Sgd.) ALICIA TOUS GONZALEZ

Sworn to and subscribed before me by Mrs. Luz-Belen Tous de Usera, Dona Celia and Alicia Tous y Gonzalez, over 21 years of age, property owners, domiciled in Ponce, Puerto Rico, whom I certify to know personally.

Ponce, Puerto Rico, May 5, 1933.

(Sgd.) A. Maldonado,
Deputy Clerk District Court of Ponce.

(The file dating stamp is duly stamped.)

In the District Court for the Judicial District of Ponce, Puerto Rico.—Belen Gonzalez, Widow of Tous, Petitioner.—Ex Parte—No. 7850—Utility and Necessity.

DISTRICT ATTORNEY'S REPORT

The district attorney for this district favorably reports hereby on the petition of Mrs. Belen Gonzalez, widow of Tous, and recommends to the Court to approve the same.

Ponce, Puerto Rico, May 5, 1933.

(Sgd.) PEDRO RODRIGUEZ SERRA,
District Attorney.

In the District Court for the Judicial District of Ponce, Puerto Rico.—Belen Gonzalez, Widow of Tous, Petitioner.—Ex Parte—No. 7850—Utility and Necessity.

ORDER

Whereas: Mrs. Belen Gonzalez, widow of Tous, as mother with *patria potestas* over her minor children Belen-Maria, Gladys, Jorge and Hector Tous y Gonzalez, of 20, 19, 17 and 13 years of age

respectively, and as the guardian of the incapacitated, Jose Tous y Gonzalez, has applied to this court for judicial authorization to acquire, in her own behalf and in that of her major daughters, Dona Luz-Belen, Ana-Rosa, Celia and Alicia Tous y Gonzalez, together with the aforesaid minor children and of the incapacitated one Jose Tous Gonzalez, a mortgage credit for $41,256.89 as principal, $11,100.00 for interest and $2,000.00 for costs, expenses, disbursements and attorney's fees, to secure the payment of four promissory notes of which the first three are for $10,000.00 as principal, $2,700.00 for interest and $500.00 for costs, expenses and attorney's fees and note No. 4 for $11,256.89 as principal, $3,000.00 for interest and $500.00 for costs, all of them to mature on March 23, 1939. Said mortgage was constituted by Mrs. Elvira Olivieri Commins by public deed No. 13 of March 23, 1932, executed before notary Fernando Zapater Martinez, acting in the place of Jose Tous Soto, upon a one-half joint interest in the following immovables:

Number One: A piece of rural property known as "Juanita" lying in the "Pueblo" and "Quebrada" barrios within the municipal district of Guayanilla. It contains 481.77 cuerdas more or less, equivalent to 189 hectares, 35 ares and 45 centiares, partly flat land applied to sugar canes and partly hilly and wooded land. There is built thereon a dwelling frame house raised from the ground, with galvanized iron roof, and a shed for storing produce. It is bounded on the north by land of Rafael Lopez, of the Rufina plantation, belonging to Mario Mercado e Hijos, and the heirs of Domingo Torres represented by Isabel Yordan; on the south by said Rufina plantation; on the west by land of the San Rafael plantation owned by the Heirs of Franceschi, by land of Andres Negroni and by land of Antonio Ramos. On the north (*sic*) by land of the latter, by land of the Heirs of Ramon Lopez, by land of Joaquin Lugo and by the road leading to Piedras Blancas barrio, and on the opposite side

by land of Antonio Llabres. Said estate is crossed by part of the railroad track.

Number Two: A piece of rural property known as "Los Indios" lying in the "Indios" barrio within the municipal district of Guayanilla with an area of 430 cuerdas, equivalent to 169 hectares, 69 centiares, applied to sugar canes, pastures, saltpeter works and woods. There is built thereon a frame house, roofed with galvanized iron and in part with shingles; another frame house, peon quarters, a house for overseers and some other buildings. It is bounded on the north by the road leading from the Barina barrio to the Indios barrio, of Guayanilla, by land of the sugar cane plantation owned by Trujillo & Mercado & Compania, now Mario Mercado e Hijos, and by land of the Heirs of Juan Irizarry; on the east by land of Gabriel Garcia, by land of the Faro plantation owned at present by Mario Mercado e Hijos and formerly by Trujillo Mercado & Compania and by mangroves of the maritime zone; on the south by the Yauco river and by land of the Mercedes plantation owned by Lluberas Hermanos, and on the west by land of Ulises Olivieri and by land of the Heirs of Antonio Perez.

Whereas:—It has been satisfactorily shown that the minors, Dona Belen-Maria, Dona Gladys, Don Jorge and Don Hector Tous y Gonzalez, and the incapacitated one, Don Jose Tous Gonzalez, together with their major sisters Dona Luz Belen, Ana Rosa, Celia and Alicia Tous y Gonzalez, own the sum of $20,000.00.

Whereas: It has been likewise shown that the partnership Mario Mercado e Hijos holds at present the aforesaid mortgage credit and the aforesaid four promissory notes and will bind itself to pay the interest on said mortgage by monthly installments at the end of each month at the rate of 8-1/4% and will further bind itself solidarily to secure the payment of the interest and principal of said mortgage credit.

Whereas: It has been satisfactorily shown that the price to be paid for said mortgage credit will be prorated as follows: $21,256.89 to be contributed by Dona Belen Gonzalez, widow of Tous, and $20,000.00 to be contributed by Luz-Belen, Ana Rosa, Celia and Alicia Tous Gonzalez, who are of age; Belen-Maria, Gladys, Jorge and Hector Tous y Gonzalez, who are minors, and Jose Tous y Gonzalez, who is incapacitated.

Whereas: The district attorney for this district has favorably reported upon said petition.

Wherefore: The court hereby grants said petition and authorizes Dona Belen Gonzalez, widow of Tous, to acquire, in behalf of her minor children Belen Maria, Gladys, Jorge and Hector Tous Gonzalez, and as the guardian of the incapacitated one, Jose Tous Gonzalez, and together with her major daughters, Dona Luz-Belen, Ana Rosa, Celia and Alicia Tous Gonzalez, the mortgage credit constituted in favor of the agricultural civil partnership Mario Mercado e Hijos by Mrs. Elvira Olivieri Commins, by public deed No. 13, of March 23, 1932, executed before notary Fernando Zapater Martinez, acting in the place of Jose Tous Soto, the interest thereon to be paid by monthly installments at the end of each month by the partnership Mario Mercado e Hijos at the rate of 8-1/4% annually, said mortgage credit to be prorated as follows: the share of Dona Belen Gonzalez, widow of Tous, shall be $21,256.89 and that of Luz-Belen, Ana Rosa, Celia and Alicia Tous y Gonzalez, who are of age,—Belen-Maria, Gladys, Jorge and Hector Tous y Gonzalez, who are minors, and Jose Tous y Gonzalez, incapacitated, $20,000.00 in equal shares and it shall be the duty of the aforesaid partnership Mario Mercado e Hijos to become a surety *in solidum* for the payment of the principal and interest of the said mortgage credit until the same is fully paid, all of which on the ground of utility and necessity regarding said minors.

Ponce, Puerto Rico, May 5, 1933.

(Sgd.) D. SEPULVEDA,
District Judge.

EXHIBIT 2 OF THE DEFENDANT.

ASSIGNMENT OF MORTGAGE CREDIT

No. 33

Ponce, Puerto Rico, May 9, 1933.

Before Me

Fernando Zapater y Martinez, attorney and notary public for this Island, with my domicile, residence and office in said city,—

There Appear

Mrs. Belen Gonzalez, widow of Tous, of age, property owner, domiciled in Ponce.

She appears in her own behalf and moreover as mother with *patria potestas* over her minor children Belen-Maria, Gladys, Jorge and Hector Tous y Gonzalez, who respectively are 20, 19, 17 and 13 years old, property owners and domiciled in Ponce, duly authorized for this appearance by an order of the District Court for the Judicial District of Ponce, Puerto Rico, made in civil case No. 7850, *In re:* Utility and Necessity, on May 5, 1933, a certified copy of which shall be enclosed with the first copy of this instrument when presented for record in the Registry of Property.

She likewise appears as guardian of Don Jose Tous y Gonzalez, of age, property owner, residing at present in San Juan, Puerto Rico, and single, to which office she was appointed by the District Court for the Judicial District of Ponce, and which she accepted and was sworn in the appointment to said office as such guardian having been entered in the registry of guardianship of said district court.

Dona Luz-Belen Tous y Gonzalez, married to Don Vicente Usera, Jr., of age, property owner, domiciled in Ponce, in her own right and, moreover, as the verbal agent of her sister, Dona Ana Rosa Tous y Gonzalez, married to Don Jose B. Carrion; domiciled in San Juan, of age and property owner.

Dona Celia and Alicia Tous y Gonzalez, of age, property owners, both single and domiciled in Ponce.

Don Mario Mercado y Montalvo, of age, a widower, property owner, domiciled in Ponce. He appears as the only managing partner of the agricultural civil partnership domiciled in Guayanilla, Puerto Rico, known as Mario Mercado e Hijos, and also in his own right.

I certify to my personal knowledge of the parties and of their personal characteristics as stated by them. They assure me to be in full possession of their civil rights and, being legally qualified for the present execution, they state as follows:—

First: That the partnership Mario Mercado e Hijos owns and holds four mortgage promissory notes payable to holder by indorsement subscribed by Mrs. Elvira Olivieri Commins on March 23, 1932, promissory notes marked 1, 2 and 3 being for $10,000.00 as principal, $2,700.00 for interest and $500.00 for costs, disbursements and attorney's fees, and promissory note No. 4 for $11,256.89 as principal, $3,000.00 for interest, plus $500.00 for costs, all of which to mature on March 23, 1939, said promissory notes having been subscribed before the undersigned notary, under affidavits numbered 2146 to 2149 both inclusive, such promissory notes being secured by voluntary mortgage No. 13, executed on March 23, 1932, before the undersigned notary, acting in the place of Jose Tous Soto, which literally copied reads as follows:

"Voluntary Mortgage.

"No. 13. Mayaguez, Puerto Rico, March 23, 1932. Before Me, Fernando Zapater Martinez, attorney and notary public for this Island, with residence, domicile and office in Ponce, Puerto Rico, acting in the place of my colleagues, Jose Tous Soto, There Appear Mrs. Elvira Olivieri Commins, of age, single on account of divorce, property owner, domiciled in Yauco,—

"Mr. Arturo Cortes y Valls, of age, married, an employee, domiciled in Guayanilla, Puerto Rico, who appears in the execution of the present deed in the name and representation

of the agricultural civil partnership Mario Mercado e Hijos, domiciled in Guayanilla, by virtue of the powers granted to him by deed No. 39, executed before notary Jose Tous Soto, on February 16, 1927, which he will prove wherever and whenever necessary.

"I certify to my personal knowledge of the parties hereto and to their personal characteristics as furnished by them. They assure me to be in the full enjoyment and exercise of their civil rights and in my opinion they possess the necessary legal qualifications for this execution. They state as follows:—

"First:—That Mrs. Elvira Olivieri y Commins owns a one-half joint interest in the immovables described as follows:

"Number One: — A piece of rural property known as 'Juanita' lying in the 'Pueblo' and 'Quebrada' barrios within the municipal district of Guayanilla. It contains 481.77 cuerdas more or less, equivalent to 189 hectares, 35 ares and 45 centiares, partly flat land applied to sugar canes and partly hilly and wooded land. There is built thereon a dwelling frame house raised from the ground, with galvanized-iron roof, and a shed for storing produce. It is bounded on the north by land of Rafael Lopez, of the 'Rufina' plantation belonging to Mario Mercado e Hijos, and the Heirs of Domingo Torres represented by Isabel Yordan; on the south by said 'Rufina' plantation; on the west by land of the 'San Rafael' plantation owned by the Heirs of Franceschi, by land of Andres Negroni and by land of Antonio Ramos. On the north (*sic*) by land of the latter, by land of the Heirs of Ramon Lopez, by land of Joaquin Lugo and by the road leading to 'Piedras Blancas' barrio, and on the opposite side by land of Antonio Llabres. Said estate is crossed by part of the railroad track.

"Title: This estate was formed by a consolidation effected by deed No. 179, executed before notary Angel Padro, of Yauco, on November 28, 1907.

"Number Two: A piece of rural property known as 'Los Indios' lying in the 'Indios' barrio, within the municipal district of Guayanilla, with an area of 430 cuerdas, equivalent to 169 hectares, 69 centiares, applied to sugar canes, pastures, saltpeter works and woods. There is built thereon a frame house, roofed with galvanized iron and in part with shingles; another frame house, peon quarters, a house for overseers and some other buildings. It is bounded: on the north by the road leading from the 'Barina' barrio to the 'Indios' barrio, of Guayanilla, by land of the sugar cane plantation owned by Trujillo & Mercado & Compania, now Mario Mercado e Hijos, and by land of the Heirs of Juan Irizarry; on the east by land of Gabriel Garcia, by land of the Faro plantation owned at present by Mario Mercado e Hijos and formerly by Trujillo Mercado & Compania and by mangroves of the maritime zone; on the south by the Yauco river and by land of the 'Mercedes' plantation owned by Lluberas Hermanos, and on the west by land of Ulises Olivieri and by land of the Heirs of Antonio Perez.

"Title: This jointly owned interest was acquired by Mrs. Elvira Olivieri y Commins by inheritance from Josefa Commins y Raldiris and it is recorded in the Registry of Property in the name of Mrs. Elvira Olivieri Commins on Folio 222 of Volume 12 of Guayanilla, Estate No. 534, First record.

"Second: That the estates above described are encumbered by a lease constituted in favor of Mario Mercado e Hijos by deed No. 55, executed on April 5, 1927, before notary Francisco Parra Capo of Ponce.

"Third: Mrs. Elvira Olivieri Commins acknowledges to be indebted to the partnership Mario Mercado e Hijos in the sum of $41,256.89 by reason of a current account with liquidated interest up to March 23, 1932.

"Fourth: Mrs. Elvira Olivieri Commins has agreed to pay to the partnership Mario Mercado e Hijos the amount owed

by her, as hereinafter expressed, and to that effect she executes:

"First: Mrs. Elvira Olivieri Commins, in payment of the amount owed by her to the partnership Mario Mercado e Hijos, as stated in the preceding third paragraph, executes and delivers to said partnership, through the attorney-in-fact, Arturo Cortes Valls, four promissory notes payable to bearer by indorsement, to fall due all of them on March 23, 1939, and subscribed by said lady for the following amounts:

"Promissory note No. One for $10,000.00 as principal, $2,700.00 for interest thereon and $500.00 for costs.

"Promissory note No. Two for $10,000.00 as principal, $2,700.00 for interest thereon and $500.00 for costs.

"Promissory note No. Three for $10,000.00 as principal, $2,700.00 for interest thereon and $500.00 for costs.

"And promissory note No. Four for $11,256.89 as principal, $3,000.00 for interest thereon and $500.00 for costs.

"Said promissory notes shall differ from each other only in their correlative numbers and amounts. They are as follows:

"No. .. 'For $. To become due . I promise to pay to the holder by indorsement of this promissory note on day, 193 , the sum of received to my entire satisfaction as a loan. This amount will bear interest at 9% annually until fully paid, payable semi-annually at the expiration of each semester. This is promissory note No. , of a series of four, totalling $. To secure the above sum, $ for interest thereon, and $ for costs, expenses, disbursements and attorney's fees I have executed a voluntary mortgage in favor of the holder by indorsement of said promissory notes in public deed No. 13 of even date before notary Fernando Zapater, acting in the place of Jose Tous Soto, upon a one-half interest belonging to me in two jointly owned estates, one of them called 'Juanita', with an area of 481.77 cuerdas more or less, lying in the 'Pueblo' and

'Quebrada' barrios of the municipal district of Guayanilla, Puerto Rico, and the other called 'Los Indios', with an area of 430 cuerdas, lying in the 'Indios' barrio of the municipal district of Guayanilla, Puerto Rico. Mayaguez, Puerto Rico, March 23, 1932.

(Sgd.) Elvira Olivieri.

Affidavit No. . Subscribed before me by Mrs. Elvira Olivieri Commins, of age, a divorcee, property owner, and domiciled in Yauco, Puerto Rico, whom I certify to know personally, in Mayaguez, Puerto Rico, on March 23, 1932.

(Sgd.) F. Zapater,
Notary Public.

There is affixed thereto and cancelled a $0.25 internal revenue stamp and affixed thereto the notarial seal.

"Second: Mrs. Elvira Olivieri Commins constitutes a voluntary mortgage upon her jointly owned interests in each of the estates above described to secure all and each of the promissory notes referred to in the foregoing clause, which lien shall encumber such condominiums until the mortgage hereby constituted is legally cancelled. Said mortgage will secure in addition to the principal of the aforesaid promissory notes, the sum of $11,100.00 for interest thereon and $2,000.00 for costs, expenses, disbursements and attorney's fees in case of judicial recovery and demandable as a penalty in such event without the necessity of a liquidation.

"Third: Mrs. Elvira Olivieri y Commins and Mr. Arturo Cortes y Valls, in behalf of the partnership Mario Mercado e Hijos, appraise the mortgaged condominiums, waiving any new appraisal or action for such purpose, as follows:

"The jointly owned interest in the estate described in the first place at $25,000.00.

"The jointly owned interest in the estate described in the second place at $50,000.00.

"Fourth: Mrs. Elvira Olivieri Commins agrees with the

partnership Mario Mercado e Hijos, that out of the rentals to which she is entitled under the contract of lease referred to in the second paragraph of said deed, that is, the sum of $4,100.00, said partnership shall retain, to be applied to the payment of the interest accrued, the sum required to cover the above amount, such retention to begin on June 2, 1932, and so on every time the same becomes due, that is, on March 4 and June 2 of each year.

"Fifth: It is stipulated that by failing to pay three installments of interest upon becoming due, the obligor shall forfeit the right to avail herself of the term allowed for paying the principal and the obligee may recover judicially on all or either of the promissory notes by means of a summary or an ordinary action.

"Sixth: If at the termination of the contract of lease referred to in paragraph second of this instrument, the mortgage promissory notes have not been paid, the obligor or her assignees or successors in interest bind themselves to impose upon any lessee the obligation to deduct from the rentals agreed upon the necessary sums for the payment of the interest owing to Mario Mercado e Hijos and to effect such payment to said partnership on the account of the obligor, as stipulated in clause 4 of this deed.

"Seventh: Option to Purchase and Sell and to Lease.—Notwithstanding the foregoing clause, the debtor, as part of the consideration of this contract, agrees with the partnership Mario Mercado e Hijos, so long as the mortgage credit herein constituted is not paid, to grant it priority to purchase and sell or lease her undivided joint interests in the estates 'Indios' and 'Juanita' upon the same price and terms. To this effect, the debtor shall advise, unless such mortgage credit is paid, by registered letter to Mario Mercado e Hijos, of any offer of sale or lease made to her and said partnership shall be granted thirty days for accepting or refusing such offer and during said period the debtor cannot sell or

lease to anybody else. Should there be a sale or lease in violation of this agreement, Mario Mercado e Hijos shall be entitled to repurchase from the purchaser or lessee, which right it can exercise for thirty days from the record of such sale or lease for subrogating itself to the place, degree or priority of the purchaser or lessee.

"Eighth: Waiver of Homestead. Mrs. Elvira Olivieri Commins states that no homestead right has been constituted by her on any of the estates hereinbefore described, but that should she do so in the future, from now on and for all time, she waives the same in favor of the partnership Mario Mercado e Hijos, its assignees or successors in interest, in consideration of the present contract and during the life thereof.

"Ninth: It is stipulated by the parties that the obligor may pay at any time before maturity the mortgage credit herein constituted or to pay on account thereof any amount not below $5,000.00, provided she serves notice on the obligee three months prior to the time when she intends to effect the payment of the principal or the sum on account of such principal.

"Tenth: The parties likewise expressly state that the lessor has received all back rentals up to date regarding the estate described and that in the present case she has received a check for $1,500.00 on the Banco de Ponce in settlement of the annual installment becoming due in the current month of March.

"Eleventh: The parties likewise agree that the actual partition of said estates cannot be carried out without the consent of Mario Mercado e Hijos so long as the mortgage herein constituted is in force.

"Twelfth: For the purpose of the Registry, the mortgage lien affecting the condominiums is prorated as follows:

"The jointly owned interest in the estate described in the first place shall answer for:

"The sum of $12,379.08 as principal,—

"The sum of $3,330.00 as interest,—

"The sum of $600.00 for costs.

"And the jointly owned interest in estate No. Two shall answer for the sum of $28,877.81 as principal,—

"The sum of $1,400.00 for costs, expenses and attorney's fees, and for interest on $7770.00.

"Thirteenth: All the expenses incurred by reason of the present deed, copy thereof and record in the Registry of Property and those of cancellation at the proper time, copy thereof and record shall be for the account of the obligor.

"Fourteenth: Each of the parties hereto, as far as the same is concerned, agree to the present deed in every respect as comformable to the terms agreed upon.

"It was so stated, executed and signed in the presence of witnesses Jose Nadal Grau and Oscar Souffront, residents of this district, of age, qualified and known to me. This deed has been read by me to the parties and to the witnesses upon their waiving the right to do so themselves, which I warned them they could do, its contents was ratified by the parties and they and the witnesses affixed their signatures,—in witness whereof and of everything stated, I, the notary, Certify. At this stage, it is set down by the parties that the sum referred to in the third paragraph of this deed as owed by Mrs. Elvira Olivieri Commins to the partnership Mario Mercado e Hijos amounting to $41,256.89, represents the total of the amount due up to date in every respect.

(Sgd.) Elvira Olivieri
A. Cortes
Dr. J. Nadal Grau
Oscar Souffront.

Signed, signeted, sealed and paraphed:

F. Zapater"

Second: That Mrs. Belen Gonzalez, widow of Tous, in her own right and in behalf of the parties represented by her, and her

major children appearing herein, have agreed with the partnership Mario Mercado e Hijos upon the assignment of the aforesaid mortgage credit and pursuant thereto they agree as follows:

First

Mr. Mario Mercado y Montalvo, as the sole managing partner of the agricultural civil partnership known as Mario Mercado e Hijos, hereby conveys, renounces and assigns in favor of Mrs. Belen Gonzalez, widow of Tous, in the representation in which she appears in this execution and in her own right, and to Dona Ana Rosa Tous de Carrion, Dona Luz Belen Tous de Usera, Dona Alicia and Dona Celia Tous y Gonzalez, the mortgage credit constituted by the deed above transcribed, the assignor subrogating the assignees to its rights in the same degree and priorities by delivering to them in this act and in my presence and that of the witnesses the four mortgage promissory notes above mentioned duly endorsed, to all of which, I, the notary, certify.

Second

It is hereby made known that in the mortgage credit above referred to and which has been the subject matter of the assignment in the present instrument, Dona Belen Gonzalez, widow of Tous, owns an interest amounting to $21,256.89, and the balance, that is, the sum of $20,000.00 is prorated share and share alike among all her major children who appear herein, and her minor children represented by her in this transaction.

Third

The parties expressly agree that though it is true that in the said mortgage deed, which is the subject matter of this assignment, the rate of interest agreed upon is 9% annually, the fact is that in consideration of the obligation that will be hereinafter assumed by the partnership Mario Mercado e Hijos to pay the interest to be accrued by monthly installments at the end of each month, said partnership Mario Mercado e Hijos shall be entitled to retain 3/4 of 1% annually of the aforesaid interest during the

life of this mortgage, as a consideration, as above stated, of the obligation to be assumed in the next clause of this deed.

Fourth

The partnership Mario Mercado e Hijos binds itself to pay to the assignees in monthly installments at the end of each month the interest on the mortgage hereby assigned at the rate of 8-1/4% annually.

Fifth

The partnership Mario Mercado e Hijos, through its managing partner, Mr. Mario Mercado Montalvo, and the latter in his own behalf, hereby constitute themselves in solidary sureties, not only for the principal of the mortgage assigned hereby, but also for the amount of interest on said mortgage during all the time comprised between now and the payment in full of principal and interest.

Sixth

The parties expressly agree that in case of the assignor, the partnership Mario Mercado e Hijos, should fail to pay the proper interest at maturity of any of the monthly installments, said partnership shall not be considered to be in default and shall not be compelled to effect the payment until the expiration of thirty days from the time of said installment becoming due.

Seventh

The assignment set out in the first clause of this instrument is made for the consideration of $41,256.89 delivered in this act to Mr. Mario Mercado Montalvo as manager of the partnership Mario Mercado e Hijos and in my presence and that of the witnesses, to which I certify, by the assignees, in a certified check on the National City Bank for which sum he gives the proper release and acquittance.

Eighth

It is likewise stipulated and agreed that any tax, excise or impost that might be levied upon the principal of or interest on the

mortgage the subject matter of this assignment, by either the Federal Government or the Insular Government, or any municipality, shall be paid for the account of and chargeable to the partnership Mario Mercado e Hijos.

Ninth

It is likewise agreed that the partnership Mario Mercado e Hijos shall see to it that payment is timely made of the taxes upon the estates encumbered by the mortgage that is hereby assigned, and in case of failure on the part of the mortgagor to pay the same the partnership Mario Mercado e Hijos will pay them within the proper semester.

Tenth

The parties in their respective rights and representations accept the present deed as drafted, as conforming to the terms agreed upon by them; and I, the notary, in accordance with law, call their attention to their rights and duties under the law concerning this execution.

It is so stated and executed in my presence and that of the witnesses, legally qualified, domiciled in this district and known to me, Mr. Rafael Torres and Mr. Julio Mirailh.

The present deed has been read by the parties and the witnesses, in the exercise of their right as advised by me, its contents were approved by the parties and all of them affixed their signatures before me, the notary, who certify to everything set down.

(Sgd.) Mario Mercado Montalvo
Belen G., widow of Tous Soto
Celia Tous Gonzalez
Alicia Tous Gonzalez
Luz B. Tous de Usera
J. Mirailh
Rafael Torres

Signed, signeted, sealed and paraphed:

F. Zapater.

There are affixed hereto and cancelled the proper internal revenue stamps. Initials: B. G. T. (There is attached hereto the following Notice of Assignment:)

Notice of Assignment

Mrs. Elvira Olivieri Commins, Mayaguez, Puerto Rico: You are hereby notified that on even date Mr. Mario Mercado Montalvo, as manager of the partnership Mario Mercado e Hijos and by deed executed before me and marked No. 33, has assigned in favor of the Heirs of Jose Tous Soto, the mortgage credit constituted by you in favor of the latter by indorsement of four mortgage promissory notes subscribed by you on March 23, 1932, notes marked 1, 2 and 3 for the sums of $10,000.00 as principal, $2,700.00 for interest and $500.00 for costs, respectively, and note marked 4 for $11,256.89 as principal, $3,000.00 for interest and $500.00 for costs, which promissory notes were held by the aforesaid partnership, which mortgage was constituted by you by deed No. 13, executed before notary Jose Tous Soto on March 23, 1932, upon the 1/2 joint interests held by you in the estates known as "Juanita" lying in the "Pueblo" and "Quebrada" barrios of the municipal district of Guayanilla, with an area of 481 cuerdas, and estate known as "Los Indios" lying in the "Indios" barrio of Guayanilla with an area of 430 cuerdas, an unverified copy of said deed of assignment being enclosed herewith. Ponce, Puerto Rico, May 9, 1933.

(Sgd.) F. Zapater,
Notary Public. (Notarial seal.)

I Hereby Certify that on even date and prior to the collection of the mail for the city of Mayaguez, Puerto Rico, I deposited in the post office of Ponce an envelope duly sealed and with the proper postage enclosing a true and faithful copy of the deed of assignment referred to in the foregoing notice, as well as of this Notice of Assignment addressed as follows: Mrs. Elvira Olivieri Commings, Mayaguez, Puerto Rico. That between Ponce and

Mayaguez there is a regular daily mail service. Ponce, Puerto Rico, May 10, 1933.

(Sgd.) Zapater,
Notary Public. (Notarial seal.)

(There is attached hereto a current printed form of the post office of Ponce, No. 4270, which reads as follows:

"Receipt for registered article No. 4270. (Postmark of) —Registered at the post office indicated in post mark. Fee paid 15 cents. Class postage –12– Return receipt fee : Spl. Del'y. fee . Delivery restricted to addressee in person, or order. Accepting employee will place his initial in space indicating restrictive delivery . Postmaster: (Per) R. O.—Mailing office: Ponce, P. R., May 10, 1933.—Registered. The sender should write the name of the addressee on back hereof as an identification. Preserve and submit this receipt in case of inquiry or application for indemnity. Registry fee and indemnity . Domestic registry fees range from 15 cents for indemnity not exceeding $50.00 up to $1.00 for indemnity not exceeding $1,000.00. The fee on domestic registered matter without intrinsic value and for which indemnity is not paid is 15 cents. Consult postmaster as to the specific domestic registry fees and as to the registry fees chargeable on registered parcel post packages for foreign countries. Fees on domestic registered C. O. D. may range from 25 cents to $1.20. Indemnity claims must be filed within one year (C. O. D. six months) from date of mailing. Form 3806. (Rev. 7-129) C5-6852. U. S. Government Printing Office, 1929."

Marginal Notes: On the same day, month and year of its execution I issued a copy to interested party. I attest.

(Sgd.) F. Zapater.

On this the 7th day of December, 1937, I issued a copy of this deed to Mr. Manuel Francisco Lluberas. I attest.

(Sgd.) Zapater.

This is a true and faithful copy of its original which under the above number is on file in the protocol of the year referred to, to which I make reference. In witness whereof and at the request of the partnership Mario Mercado e Hijos I issue the present copy which I sign, signet, paraph and seal in Ponce, P. R., on this the 20th day of December, 1937.

(Sgd.) F. Zapater.

(There are affixed hereto and cancelled internal revenue stamps worth $4.50 and on all the folios there has been affixed the notarial seal, paraph of the notary and seal of the Registry of Property.) The following appears on the back of the last page: "I, Miguel Planellas Yanez, Registrar of Property of Ponce, Puerto Rico, and its Mortgage District, Do Hereby Certify:

"1. That the contract to which this instrument refers, which is a copy of deed No. 33 of May 9, 1933, executed before notary Fernando Zapater Y Martinez, of Ponce, and by virtue of another copy thereof, and having on view other supplementary papers, was recorded on May 16, 1933, as regards the estate 'Los Indios', on folio 201 of Volume 33 of Guayanilla, estate No. 534 triplicate, 14th record, and, as regards the estate 'Juanita', on the back of folio 24 of Volume 16 of Guayanilla, estate No. 711, 12th record, on which records there was set down the curable defect of the failure of the purchaser Ana Rosa Tous y Gonzalez being legally represented in the execution.

"2. That the aforesaid mortgage credit appears at present from the Registry as having been cancelled according to the 16th record of estate No. 534 quadruplicate, on the back of folio 187 of Volume 36 of Guayanilla, and according to a note on the margin of record 12 of estate No. 711 triplicate, on folio 1 of Volume 34 of Guayanilla, which entries were made on March 20, 1937, in accordance with a copy of deed No. 47 of March 8, 1937, executed before notary Fernando Zapater y Martinez.

"3. That the same is not verified as regards other particulars because the petitioner has not so requested.

"In witness whereof and at the request of attorney Leopoldo Tormes Garcia I issue the present copy in Ponce, Puerto Rico, on this the 10th day of November, 1939.

"(Sgd.) Miguel Planellas Yanez,
Registrar of Property
of Ponce, Puerto Rico.

"(There are affixed hereto and cancelled 2 internal revenue stamps worth $1.00 each and the seal of the Registry of Property.) Lower down it reads: 'Cancelled two $1.00 stamps, No. 6 of the Schedule of Fees. Ponce, Puerto Rico, November 10, 1939.

The Registrar (Sgd.) Miguel Planellas.'"

(It has a cover page with the following legend):

"Attorney Fernando Zapater Martinez—Attorney and Notary Public—No. 33—Deed of Assignment of Mortgage—Executed by Mrs. Belen Gonzalez, Widow of Tous Soto, Mr. Mario Mercado Montalvo and Mrs. Elvira Olivieri y Commins—May 9, 1933—Ponce, Puerto Rico."

EXHIBIT 3 OF THE DEFENDANTS.

Attorney Fernando Zapater Martinez—Attorney and Notary Public—Ponce, Puerto Rico.

NOTICE OF ASSIGNMENT

Mrs. Elvira Olivieri Commins, Mayaguez, Puerto Rico:

You are hereby notified that on even date Mr. Mario Mercado Montalvo, as manager of the partnership Mario Mercado e Hijos and by deed executed before me and marked No. 33, has assigned in favor of the Heirs of Jose Tous Soto, the mortgage credit constituted by you in favor of the latter by indorsement of four mortgage promissory notes subscribed by you on March 23, 1932,

notes marked 1, 2 and 3 for the sums of $10,000.00 as principal, $2,700.00 for interest and $500.00 for costs, respectively, and note marked 4 for $11,256.89 as principal, $3,000.00 for interest and $500.00 for costs, which promissory notes were held by the aforesaid partnership, which mortgage was constituted by you by deed No. 13, executed before notary Jose Tous Soto on March 23, 1932, upon the 1/2 joint interests held by you in the estates known as "Juanita" lying in the "Pueblo" and "Quebrada" barrios of the municipal district of Guayanilla, with an area of 481 cuerdas, and estate known as "Los Indios" lying in the "Indios" barrio, of Guayanilla with an area of 430 cuerdas; an unverified copy of said deed of assignment being enclosed herewith. Ponce, Puerto Rico, May 9, 1933.

(Sgd.) F. ZAPATER,
Notary Public.

I Hereby Certify: That on even date and prior to the collection of the mail for the city of Mayaguez, Puerto Rico, I deposited in the post office of Ponce an envelope duly sealed and with the proper postage enclosing a true and faithful copy of the deed of assignment referred to in the foregoing notice, as well as of this Notice of Assignment addressed as follows: "Mrs. Elvira Olivieri Commins, Mayaguez, Puerto Rico." That between Ponce and Mayaguez there is a regular daily mail service. Ponce, Puerto Rico, May 10, 1933.

(Sgd.) F. Zapater,
Notary Public.

(There is stamped hereon the notarial seal.)

ASSIGNMENT OF MORTGAGE CREDIT

No. 33

Ponce, Puerto Rico, May 9, 1933.

Before Me

Fernando Zapater y Martinez, attorney and notary public for this Island, with my domicile, residence and office in said city,—

There Appear

Mrs. Belen Gonzalez, widow of Tous, of age, property owner, domiciled in Ponce.

She appears in her own behalf and, moreover, as mother with *patria potestas* over her minor children Belen-Maria, Gladys, Jorge and Hector Tous y Gonzalez, who respectively are 20, 19, 17 and 13 years old, property owners and domiciled in Ponce, duly authorized for this appearance by an order of the District Court for the Judicial District of Ponce, Puerto Rico, made in civil case No. 7850, *In re:* Utility and Necessity, on May 5, 1933, a certified copy of which shall be enclosed with the first copy of this instrument when presented for record in the Registry of Property.

She likewise appears as guardian of Don Jose Tous y Gonzalez, of age, property owner, residing at present in San Juan, Puerto Rico, and single, to which office she was appointed by the District Court for the Judicial District of Ponce, and which she accepted and was sworn in, the appointment to said office as such guardian having been entered in the registry of guardianship of said district court.

Dona Luz-Belen Tous y Gonzalez, married to Don Vicente Usera, Jr., of age, property owner, domiciled in Ponce, in her own right and, moreover, as the verbal agent of her sister, Dona Ana Rosa Tous y Gonzalez, married to Don Jose B. Carrion, domiciled in San Juan, of age and property owner.

Dona Celia and Alicia Tous y Gonzalez, of age, property owners, both single and domiciled in Ponce.

Don Mario Mercado y Montalvo, of age, a widower, property owner, domiciled in Ponce. He appears as the only managing partner of the agricultural civil partnership domiciled in Guayanilla, Puerto Rico, known as Mario Mercado e Hijos, and also in his own right.

I certify to my personal knowledge of the parties and of their personal characteristics as stated by them. They assure me to be in full possession of their civil rights and, being legally qualified for the present execution, they state as follows:—.

First: That the partnership Mario Mercado e Hijos owns and holds four mortgage promissory notes payable to holder by indorsement subscribed by Mrs. Elvira Olivieri Commins on March 23, 1932, promissory notes marked 1, 2 and 3 being for $10,000.00 as principal, $2,700.00 for interest and $500.00 for costs, disbursements and attorney's fees, and promissory note No. 4 for $11,256.89 as principal, $3,000.00 for interest, plus $500.00 for costs, all of which to mature on March 23, 1939, said promissory notes having been subscribed before the undersigned notary, under affidavits numbered 2146 to 2149 both inclusive, such promissory notes being secured by voluntary mortgage No. 13, executed on March 23, 1932, before the undersigned notary, acting in the place of Jose Tous Soto, which literally copied reads as follows:

"Voluntary Mortgage. No. 13. Mayaguez, Puerto Rico, March 23, 1932.—Before Me—Fernando Zapater Martinez, attorney and notary public for this Island, with residence, domicile and office in Ponce, Puerto Rico, acting in the place of my colleague Jose Tous Soto, There Appear Mrs. Elvira Olivieri Commins, of age, single on account of divorce, property owner, domiciled in Yauco,—

"Mr. Arturo Cortes y Valls, of age, married, an employee, domiciled in Guayanilla, Puerto Rico, who appears in the execution of the present deed in the name and representation of the agricultural civil partnership Mario Mercado e Hijos, domiciled in Guayanilla, by virtue of the powers granted to him by deed No. 39, executed before notary Jose Tous Soto, on February 16, 1927, which he will prove wherever and whenever necessary.

"I certify to my personal knowledge of the parties hereto and to their personal characteristics as furnished by them. They assure me to be in the full enjoyment and exercise of their civil rights and in my opinion they possess the necessary legal qualifications for this execution. They state as follows:

"First: That Mrs. Elvira Olivieri y Commins owns a one-half joint interest in the immovables described as follows:

"Number One: A piece of rural property known as 'Juanita' lying in the 'Pueblo' and 'Quebrada' barrios within the municipal district of Guayanilla. It contains 481.77 cuerdas more or less, equivalent to 189 hectares, 35 ares and 45 centiares, partly flat land applied to sugar canes and partly hilly and wooded land. There is built thereon a dwelling frame house raised from the ground, with galvanized-iron roof, and a shed for storing produce. It is bounded on the north by land of Rafael Lopez, of the 'Rufina' plantation belonging to Mario Mercado e Hijos, and the Heirs of Domingo Torres represented by Isabel Yordan; on the south by said 'Rufina' plantation; on the west by land of the 'San Rafael' plantation owned by the Heirs of Franceschi, by land of Andres Negroni and by land of Antonio Ramos. On the north (*sic*) by land of the latter, by land of the Heirs of Ramon Lopez, by land of Joaquin Lugo and by the road leading to 'Piedras Blancas' barrio, and on the opposite side by land of Antonio Llabres. Said estate is crossed by part of the railroad track.

"Title: This estate was formed by a consolidation effected by deed No. 179, executed before notary Angel Padro, of Yauco, on November 28, 1907.

"Number Two: A piece of rural property known as 'Los Indios' lying in the 'Indios' barrio, within the municipal district of Guayanilla, with an area of 430 cuerdas, equivalent to 169 hectares, 69 centiares, applied to sugar canes, pastures, saltpeter works and woods. There is built thereon a frame house, roofed with galvanized iron and in part with shingles; another frame house, peon quarters, a house for overseers and some other buildings. It is bounded: on the north by the road leading from the 'Barina' barrio to the 'Indios' barrio, of Guayanilla, by land of the sugar cane plantation owned by Trujillo & Mercado & Compania, now

Mario Mercado e Hijos, and by land of the Heirs of Juan Irizarry; on the east by land of Gabriel Garcia, by land of the Faro plantation owned at present by Mario Mercado e Hijos and formerly by Trujillo Mercado & Compania and by mangroves of the maritime zone; on the south by the Yauco river and by land of the 'Mercedes' plantation owned by Lluberas Hermanos, and on the west by land of Ulises Olivieri and by land of the Heirs of Antonio Perez.

"Title: This jointly owned interest was acquired by Mrs. Elvira Olivieri y Commins by inheritance from Josefa Commins y Raldiris and it is recorded in the Registry of Property in the name of Mrs. Elvira Olivieri Commins on Folio 222 of Volume 12 of Guayanilla, Estate No. 534, First record.

"Second: That the estates above described are encumbered by a lease constituted in favor of Mario Merçado e Hijos by deed No. 50, executed on April 5, 1927, before notary Francisco Parra Capo, of Ponce.

"Third: Mrs. Elvira Olivieri Commins acknowledges to be indebted to the partnership Mario Mercado e Hijos in the sum of $41,256.89 by reason of a current account with liquidated interest up to March 23, 1932.

"Fourth: Mrs. Elvira Olivieri Commins has agreed to pay to the partnership Mario Mercado e Hijos the amount owed by her, as hereinafter expressed, and to that effect she executes:

"First: Mrs. Elvira Olivieri Commins, in payment of the amount owed by her to the partnership Mario Mercado e Hijos, as stated in the preceding third paragraph, executes and delivers to said partnership through the attorney-in-fact, Arturo Cortes Valls, four promissory notes payable to bearer by endorsement, to fall due all of them on March 23, 1939, and subscribed by said lady for the following amounts:

"Promissory note No. One for $10,000.00 as principal, $2,700.00 for interest thereon and $500.00 for costs.

"Promissory note No. Two for $10,000.00 as principal, $2,700.00 for interest thereon and $500.00 for costs.

"Promissory note No. Three for $10,000.00 as principal, $2,700.00 for interest thereon and $500.00 for costs.

"And promissory note No. Four for $11,256.89 as principal, $3,000.00 for interest thereon and $500.00 for costs.

"Said promissory notes shall differ from each other only in their correlative numbers and amounts. They are as follows:

"No. . For $. To become due . I promise to pay to the holder by indorsement of this promissory note on day, 193 , the sum of received to my entire satisfaction as a loan. This amount will bear interest at 9% annually, until fully paid, payable semi-annually at the expiration of each semester. This is promissory note No. of a series of four, totalling $. To secure the above sum, $ for interest thereon and $ for costs, expenses, disbursements and attorney's fees I have executed a voluntary mortgage in favor of the holder by indorsement of said promissory notes in public deed No. 13 of even date before notary Fernando Zapater, acting in the place of Jose Tous Soto, upon a one-half interest belonging to me in two jointly owned estates, one of them called 'Juanita', with an area of 481.77 cuerdas more or less, lying in the 'Pueblo' and 'Quebrada' barrios of the municipal district of Guayanilla, Puerto Rico, and the other called 'Los Indios', with an area of 430 cuerdas, lying in the 'Indios' barrio of the municipal district of Guayanilla, Puerto Rico. Mayaguez, Puerto Rico, March 23, 1932.

(Sgd.) Elvira Olivieri.

Affidavit No. . Subscribed before me by Mrs. Elvira Olivieri Commins, of age, a divorcee, property owner, and domiciled in Yauco, Puerto Rico, whom I certify to know personally, in Mayaguez, Puerto Rico, on March 23, 1932.

(Sgd.) F. Zapater,
Notary Public.

There is affixed thereto and cancelled a $0.25 internal revenue stamp and affixed thereto the notarial seal.

"Second: Mrs. Elvira Olivieri Commins constitutes a voluntary mortgage upon her jointly owned interests in each of the estates above described to secure all and each of the promissory notes referred to in the foregoing clause, which lien shall encumber such condominiums until the mortgage hereby constituted is legally cancelled. Said mortgage will secure in addition to the principal of the aforesaid promissory notes, the sum of $11,100.00 for interest thereon and $2,000.00 for costs, expenses, disbursements and attorney's fees in case of judicial recovery and demandable as a penalty in such event without the necessity of a liquidation.

"Third: Mrs. Elvira Olivieri y Commins and Mr. Arturo Cortes y Valls, in behalf of the partnership Mario Mercado e Hijos, appraise the mortgaged condominiums, waiving any new appraisal or action for such purpose, as follows:

"The jointly owned interest in the estate described in the first place at $25,000.00.

"The jointly owned interest in the estate described in the second place at $50,000.00.

"Fourth: Mrs. Elvira Olivieri Commins agrees with the partnership Mario Mercado e Hijos, that out of the rentals to which she is entitled under the contract of lease referred to in the second paragraph of said deed, that is, the sum of $4,100.00, said partnership shall retain, to be applied to the payment of the interest accrued, the sum required to cover the above amount, such retention to begin on June 2, 1932, and so on every time the same becomes due, that is, on March 4 and June 2 of each year.

"Fifth: It is stipulated that by failing to pay three installments of interest upon becoming due, the obligor shall forfeit the right to avail herself of the term allowed for paying the principal and the obligee may recover judicially on all or

either of the promissory notes by means of a summary or an ordinary action.

"Sixth: If at the termination of the contract of lease referred to in paragraph second of this instrument, the mortgage promissory notes have not been paid, the obligor or her assignees or successors in interest bind themselves to impose upon any lessee the obligation to deduct from the rentals agreed upon the necessary sums for the payment of the interest owing to Mario Mercado e Hijos and to effect such payment to said partnership on the account of the obligor, as stipulated in clause 4 of this deed.

"Seventh: Option to Purchase and Sell and to Lease. Notwithstanding the foregoing clause, the debtor, as part of the consideration of this contract, agrees with the partnership Mario Mercado e Hijos, so long as the mortgage credit herein constituted is not paid, to grant it priority to purchase and sell or lease her undivided joint interests in the estates 'Indios' and 'Juanita' upon the same price and terms. To this effect, the debtor shall advise, unless such mortgage credit is paid, by registered letter to Mario Mercado e Hijos, of any offer of sale or lease made to her and said partnership shall be granted thirty days for accepting or refusing such offer and during said period the debtor cannot sell or lease to anybody else. Should there be a sale or lease in violation of this agreement, Mario Mercado e Hijos shall be entitled to repurchase from the purchaser or lessee, which right it can exercise for thirty days from the record of such sale or lease for subrogating itself to the place, degree or priority of the purchaser or lessee.

"Eighth: Waiver of Homestead. Mrs. Elvira Olivieri Commins states that no homestead right has been constituted by her on any of the estates hereinbefore described, but that should she do so in the future, from now on and for all time, she waives the same in favor of the partnership Mario Mer-

cado e Hijos, its assignees or successors in interest, in consideration of the present contract and during the life thereof.

"Ninth: It is stipulated by the parties that the obligor may pay at any time before maturity the mortgage credit herein constituted or to pay on account thereof any amount not below $5,000.00, provided she serves notice on the obligee three months prior to the time when she intends to effect the payment of the principal or the sum on account of such principal.

"Tenth: The parties likewise expressly state that the lessor has received all back rentals up to date regarding the estate described and that in the present case she has received a check for $1,500.00 on the Banco de Ponce in settlement of the annual installment becoming due in the current month of March.

"Eleventh: The parties likewise agree that the actual partition of said estates cannot be carried out without the consent of Mario Mercado e Hijos so long as the mortgage herein constituted is in force.

"Twelfth: For the purpose of the Registry, the mortgage lien affecting the condominiums is prorated as follows:

"The jointly owned interest in the estate described in the first place shall answer for:

"The sum of $12,379.08 as principal,—

"The sum of $3,330.00 as interest,—

"The sum of $600.00 for costs.

"And the jointly owned interest in estate No. Two shall answer for the sum of $28,877.81 as principal,—

"The sum of $1,400.00 for costs, expenses and attorney's fees, and for interest on $7770.00.

"Thirteenth: All the expenses incurred by reason of the present deed, copy thereof and record in the Registry of Property and those of cancellation at the proper time, copy thereof and record shall be for the account of the obligor.

"Fourteenth: Each of the parties hereto, as far as the same is concerned, agree to the present deed in every respect as conformable to the terms agreed upon.

"It was so stated, executed and signed in the presence of witnesses Jose Nadal Grau and Oscar Souffront, residents of this district, of age, qualified and known to me. This deed has been read by me to the parties and to the witnesses upon their waiving the right to do so themselves, which I warned them they could do, its contents was ratified by the parties and they and the witnesses affixed their signatures,—in witness whereof and of everything stated, I, the notary, Certify. At this stage, it is set down by the parties that the sum referred to in the third paragraph of this deed as owed by Mrs. Elvira Olivieri Commins to the partnership Mario Mercado e Hijos amounting to $41,256.89, represents the total of the amount due up to date in every respect.

"(Sgd.) Elvira Olivieri
A. Cortes
Dr. J. Nadal Grau
Oscar Souffront

"Signed, signeted, sealed and paraphed:

F. Zapater."

Second: That Mrs. Belen Gonzalez, widow of Tous, in her own right and in behalf of the parties represented by her, and her major children appearing herein have agreed with the partnership Mario Mercado e Hijos upon the assignment of the aforesaid mortgage credit and pursuant thereto they agree as follows:

First

Mr. Mario Mercado y Montalvo, as the sole managing partner of the agricultural civil partnership known as Mario Mercado e Hijos, hereby conveys, renounces and assigns in favor of Mrs. Belen Gonzalez, widow of Tous, in the representation in which she appears in this execution and in her own right, and to Dona

Ana Rosa Tous de Carrion, Dona Luz Belen Tous de Usera, Dona Alicia and Dona Celia Tous y Gonzalez, the mortgage credit constituted by the deed above transcribed, the assignor subrogating the assignees to its rights in the same degree and priorities by delivering to them in this act and in my presence and that of the witnesses the four mortgage promissory notes above mentioned duly endorsed, to all of which, I, the notary, certify.

Second

It is hereby made known that in the mortgage credit above referred to and which has been the subject matter of the assignment in the present instrument, Dona Belen Gonzalez, widow of Tous, owns an interest amounting to $21,256.89, and the balance, that is, the sum of $20,000.00 is prorated share and share alike among all her major children who appear herein, and her minor children represented by her in this transaction.

Third

The parties expressly agree that though it is true that in the said mortgage deed, which is the subject matter of this assignment, the rate of interest agreed upon is 9% annually, the fact is that in consideration of the obligation that will be hereinafter assumed by the partnership Mario Mercado e Hijos to pay the interest to be accrued by monthly installments at the end of each month, said partnership Mario Mercado e Hijos shall be entitled to retain 3/4 of 1% annually of the aforesaid interest during the life of this mortgage, as a consideration, as above stated, of the obligation to be assumed in the next clause of this deed.

Fourth

The partnership Mario Mercado e Hijos binds itself to pay to the assignees in monthly installments at the end of each month the interest on the mortgage hereby assigned at the rate of 8-1/4% annually.

Fifth

The partnership Mario Mercado e Hijos, through its managing partner, Mr. Mario Mercado Montalvo, and the latter in his own behalf, hereby constitute themselves in solidary sureties, not only for the principal of the mortgage assigned hereby, but also for the amount of interest on said mortgage during all the time comprised between now and the payment in full of principal and interest.

Sixth

The parties expressly agree that in case of the assignor, the partnership Mario Mercado e Hijos, should fail to pay the proper interest at maturity of any of the monthly installments, said partnership shall not be considered to be in default and shall not be compelled to effect the payment until the expiration of thirty days from the time of said installment becoming due.

Seventh

The assignment set out in the first clause of this instrument is made for the consideration of $11,256.89 delivered in this act to Mr. Mario Mercado Montalvo as manager of the partnership Mario Mercado e Hijos and in my presence and that of the witnesses, to which I certify, by the assignees, in a certified check on the National City Bank for which sum he gives the proper release and acquittance.

Eighth

It is likewise stipulated and agreed that any tax, excise or impost that might be levied upon the principal of or interest on the mortgage the subject matter of this assignment, by either the Federal Government or the Insular Government, or any municipality, shall be paid for the account of and chargeable to the partnership Mario Mercado e Hijos.

Ninth

It is likewise agreed that the partnership Mario Mercado e Hijos shall see to it that payment is timely made of the taxes

upon the estates encumbered by the mortgage that is hereby assigned, and in case of failure on the part of the mortgagor to pay the same, the partnership Mario Mercado e Hijos will pay them within the proper semester.

Tenth

The parties in their respective rights and representations accept the present deed as drafted, as conforming to the terms agreed upon by them; and I, the notary, in accordance with law, call their attention to their rights and duties under the law concerning this execution.

It is so stated and executed in my presence and that of the witnesses, legally qualified, domiciled in this district and known to me, Mr. Rafael Torres and Mr. Julio Mirailh.

The present deed has been read by the parties and the witnesses, in the exercise of their right as advised by me, its contents were approved by the parties and all of them affixed their signatures before me the notary, who certify to everything set down.

EXHIBIT 4 OF THE DEFENDANTS.

In the District Court for the Judicial District of Ponce, Puerto Rico.—Belen Gonzalez Salicrup, Widow of Tous, as Mother with *Patria Potestas* Over her Minor Son Hector Tous Gonzalez, and Guardian of Jose Tous Gonzalez, Incapacitated,—Petitioner,—Ex Parte.—Civil Case No. 203. Judicial Authorization.

PETITION

Now comes the petitioner herein, Belen Gonzalez Salicrup, widow of Tous, before this Hon. Court through her undersigned attorney and respectfully states:

1. That petitioner is over 21 years of age, property owner, domiciled in Ponce and is mother with *patria potestas* over her minor son Hector Tous Gonzalez, 17 years old, property owner and domiciled in Ponce and guardian of the incapacitated one Jose Tous Gonzalez, over 21 years of age, property owner, a

casual resident of San Juan, Puerto Rico, which office she accepted and was sworn in before this Hon. Court, all of which appears in the proper registry of guardianship of this Court.

2. That by public deed No. 33 of May 9, 1933, executed before notary Fernando Zapater Martinez, recorded on the back of folio 24 of Volume 16 of Guayanilla, estate No. 711, 12th record, and on folio 201 of Volume 33 of Guayanilla, estate No. 534 triplicate, 14th record, Mr. Mario Mercado Montalvo, as managing partner of the agricultural civil partnership known as Mario Mercado e Hijos, domiciled in Guayanilla, Puerto Rico, and, moreover, in his own right assigned to Mrs. Belen Gonzalez, widow of Tous, petitioner herein, in her own right and; moreover, as mother with *patria potestas* over her then minor children, Belen-Maria, Gladys and Jorge, and Hector Tous Gonzalez, still a minor, and as guardian of the incapacitated one, Jose Tous Gonzalez, to Luz Belen, Ana Rosa, Celia and Alicia Tous Gonzalez, a mortgage credit constituted in public deed No. 13, executed in Mayaguez on March 23, 1932, by Mrs. Elvira Olivieri Commins before the aforesaid notary, Fernando Zapater Martinez, acting in the place of Jose Tous Soto, upon a one-half jointly owned interest in the immovables described as follows:

"Number One: A piece of rural property known as 'Juanita' lying in the 'Pueblo' and 'Quebrada' barrios within the municipal district of Guayanilla. It contains 481.77 cuerdas more or less, equivalent to 189 hectares, 35 ares and 45 centiares, partly flat land applied to sugar canes and partly hilly and wooded land. There is built thereon a dwelling frame house raised from the ground, with galvanized-iron roof, and a shed for storing produce. It is bounded: on the north by land of Rafael Lopez, of the 'Rufina' plantation, belonging to Mario Mercado e Hijos, and the Heirs of Domingo Torres represented by Isabel Yordan; on the south by said 'Rufina' plantation; on the west by land of the 'San Rafael' plantation owned by the Heirs of Franceschi, by land of Andres

Negroni and by land of Antonio Ramos. On the north (*sic*) by land of the latter, by land of the Heirs of Ramon Lopez, by land of Joaquin Lugo and by the road leading to Piedras Blancas barrio, and on the opposite side by land of Antonio Llabres. Said estate is crossed by part of the railroad track.

"Number Two: A piece of rural property known as 'Los Indios' lying in the Indios barrio within the municipal district of Guayanilla with an area of 430 cuerdas, equivalent to 169 hectares, 69 centiares, applied to sugar canes, pastures, saltpeter works and woods. There is built thereon a frame house, roofed with galvanized iron and in part with shingles; another frame house, peon quarters, a house for overseers and some other buildings. It is bounded: on the north by the road leading from the 'Barina' barrio to the 'Indios' barrio of Guayanilla, by land of the sugar cane plantation owned by Trujillo & Mercado & Compania, now Mario Mercado e Hijos and by land of the Heirs of Juan Irizarry; on the east by land of Gabriel Garcia, by land of the Faro plantation owned at present by Mario Mercado e Hijos and formerly by Trujillo Mercado & Company and by mangroves of the maritime zone; on the south by the Yauco river and by land of the 'Mercedes' plantation owned by Llubera Hermanos, and on the west by land of Ulises Olivieri and by land of the Heirs of Antonio Perez."

3. Said mortgage was constituted to secure four promissory notes payable to bearer by indorsement, all of which to mature on March 23, 1939, subscribed by said lady for the following amounts: Note No. 1 for $10,000.00 as principal, $2,700.00 for interest and $500.00 for costs; note No. 2 for $10,000.00 as principal, $2,700.00 for interest and $500.00 for costs; note No. 3 for $10,000.00 as principal, $2,700.00 for interest and $500.00 for costs; and note No. 4 for $11,256.89 as principal, $3,000.00 for interest and $500.00 for costs, said mortgage securing besides

the principal of the said notes, the sum of $11,000.00 for interest and $2,000.00 for costs, expenses, disbursements and attorney's fees in case of judicial recovery, which notes were, pursuant to the aforesaid deed of assignment of credit, duly endorsed to the Heirs of Jose Tous Soto already referred to.

4. That in the aforesaid deed of constitution of mortgage the following stipulation was inserted:

> "Ninth: It is stipulated by the parties that the obligor may pay at any time before maturity the mortgage credit herein constituted or to pay on account thereof any amount not below $5,000.00, provided she serves notice on the obligee three months prior to the time when she intends to effect the payment of the principal or the sum on account of such principal."

5. That Mrs. Belén Gonzalez, widow of Tous, owns an interest in said mortgage credit amounting to $21,256.89 and the balance of $20,000.00 is prorated in equal shares among all her children, majors and minors, and therefore the minor Hector Tous Gonzalez and the incapacitated one, Jose Tous Gonzalez, are entitled to the sum of $2,222.22-2/9 each.

6. That the mortgagor has requested to have the aforesaid mortgage cancelled, and such mortgagees, as are of age, are willing to cancel the same and have instructed notary Fernando Zapater Martinez to proceed to draw up the proper deed of cancellation."

By Virtue Whereof we move the Court to authorize the petitioner Belén Gonzalez Salicrup, widow of Tous, to appear before a notary and execute the proper deed of cancellation of mortgage as to the share therein owned by the minor Hector Tous Gonzalez and the incapacitated one, Jose Tous Gonzalez, the amount of said shares in the principal of the said mortgage to be deposited with the clerk of this Court, to be used and disposed of in accordance with further orders of this Court, all of which with the

consent of the district attorney after a proper hearing has been had.

Ponce, Puerto Rico, March 4, 1937.

(Sgd.) F. ZAPATER,
Counsel for petitioner.

I, Belen Gonzalez, widow of Tous, Do Solemnly Swear:

That I am the petitioner in the present case; that I have read the foregoing petition, and that the facts therein stated are true and personally known to me.

Ponce, Puerto Rico, March 4, 1937.

(Sgd.) Belen G., widow of Tous Soto.

Sworn to and subscribed before me by Mrs. Belen G., widow of Tous, of age, property owner, domiciled in Ponce, P. R., whom I certify to know personally.

Ponce, Puerto Rico, March 4, 1937.

(Sgd.) E. Gotay Purcell,
Clerk of the District Court of Ponce.

Served with copy this day, the 4th of March, 1937.

R. V. Perez Marchand,
District Attorney
Per: (Sgd.) H. Rivera, Stenographer.

There are affixed hereto and cancelled a $5.00 internal revenue stamp and a Bar Association stamp. There is a note reading: "Filed March 4, 1937," and underneath a paraph.

In the District Court for the Judicial District of Ponce, Puerto Rico.—Belen Gonzalez, Widow of Tous, et als., Petitioner.
—Ex Parte—Civil Case No. Judicial Authorization.

ENTRY UPON THE CALENDAR

To the Clerk of the Court:

Please enter upon the calendar, on Friday, the 5th instant, the hearing of this case.

Ponce, Puerto Rico, March 4, 1937.

(Sgd.) F. ZAPATER,
Counsel for petitioner.

Served with copy on this the day of March, 1937.

.....

District Attorney.

ASSIGNMENT OF MORTGAGE CREDIT

No. 33

Ponce, Puerto Rico, May 9, 1933.

Before Me

Fernando Zapater y Martinez, attorney and notary public for this Island, with my domicile, residence and office in said city,—

There Appear

Mrs. Belen Gonzalez, widow of Tous, of age, property owner, domiciled in Ponce.

She appears in her own behalf, and, moreover, as mother with *patria potestas* over her minor children Belen-Maria, Gladys, Jorge and Hector Tous y Gonzalez, who respectively are 20, 19, 17 and 13 years old, property owners and domiciled in Ponce, duly authorized for this appearance by an order of the District Court for the Judicial District of Ponce, Puerto Rico, made in civil case No. 7850, *In re:* Utility and Necessity, on May 5, 1933, a certified copy of which shall be enclosed with the first copy of this instrument when presented for record in the Registry of Property.

She likewise appears as guardian of Don Jose Tous y Gonzalez, of age, property owner, residing at present in San Juan, Puerto Rico, and single, to which office she was appointed by the District Court for the Judicial District of Ponce, and which she accepted and was sworn in, the appointment to said office as such guardian having been entered in the registry of guardianship of said district court.

Dona Luz-Belen Tous y Gonzalez, married to Don Vicente Usera, Jr., of age, property owner, domiciled in Ponce, in her own right and, moreover, as the verbal agent of her sister, Dona

Ana Rosa Tous y Gonzalez, married to Don Jose B. Carrion, domiciled in San Juan, of age and property owner.

Dona Celia and Alicia Tous y Gonzalez, of age, property owners, both single and domiciled in Ponce.

Don Mario Mercado y Montalvo, of age, a widower, property owner, domiciled in Ponce. He appears as the only managing partner of the agricultural civil partnership domiciled in Guayanilla, Puerto Rico, known as Mario Mercado e Hijos, and also in his own right.

I certify to my personal knowledge of the parties and of their personal characteristics as stated by them. They assure me to be in full possession of their civil rights and, being legally qualified for the present execution, they state as follows:

First: That the partnership Mario Mercado e Hijos owns and holds four mortgage promissory notes payable to holder by indorsement subscribed by Mrs. Elvira Olivieri Commins on March 23, 1932, promissory notes marked 1, 2 and 3 being for $10,000.00 as principal, $2,700.00 for interest and $500.00 for costs, disbursements and attorney's fees, and promissory note No. 4 for $11,256.89 as principal, $3,000.00 for interest, plus $500.00 for costs, all of which to mature on March 23, 1939, said promissory notes having been subscribed before the undersigned notary, under affidavits numbered 2146 to 2149 both inclusive, such promissory notes being secured by voluntary mortgage No. 13, executed on March 23, 1932, before the undersigned notary, acting in the place of Jose Tous Soto, which literally copied reads as follows:

"Voluntary Mortgage. No. 13. Mayaguez, Puerto Rico, March 23, 1932. Before Me Fernando Zapater Martinez, attorney and notary public for this Island, with residence, domicile and office in Ponce, Puerto Rico, acting in the place of my colleague Jose Tous Soto,—There Appear—Mrs. Elvira Olivieri Commins, of age, single on account of divorce, property owner, domiciled in Yauco,—

"Mr. Arturo Cortes y Valls, of age, married, an employee,

domiciled in Guayanilla, Puerto Rico, who appears in the execution of the present deed in the name and representation of the agricultural civil partnership Mario Mercado e Hijos, domiciled in Guayanilla, by virtue of the powers granted to him by deed No. 39, executed before notary Jose Tous Soto, on February 16, 1927, which he will prove wherever and whenever necessary.

"I certify to my personal knowledge of the parties hereto and to their personal characteristics as furnished by them. They assure me to be in the full enjoyment and exercise of their civil rights and in my opinion they possess the necessary legal qualifications for this execution. They state as follows:

"First: That Mrs. Elvira Olivieri y Commins owns a one-half joint interest in the immovables described as follows:

"Number One: A piece of rural property known as 'Juanita' lying in the 'Pueblo' and 'Quebrada' barrios within the municipal district of Guayanilla. It contains 481.77 cuerdas more or less, equivalent to 189 hectares, 35 ares and 45 centiares, partly flat land applied to sugar canes and partly hilly and wooded land. There is built thereon a dwelling frame house raised from the ground, with galvanized-iron roof, and a shed for storing produce. It is bounded: on the north by land of Rafael Lopez, of the 'Rufina' plantation belonging to Mario Mercado e Hijos, and the Heirs of Domingo Torres represented by Isabel Yordan; on the south by said 'Rufina' plantation; on the west by land of the 'San Rafael' plantation owned by the Heirs of Franceschi, by land of Andres Negroni and by land of Antonio Ramos. On the north (*sic*) by land of the latter, by land of the Heirs of Ramon Lopez, by land of Joaquin Lugo and by the road leading to 'Piedras Blancas' barrio, and on the opposite side by land of Antonio Llabres. Said estate is crossed by part of the railroad track.

"Title: This estate was formed by a consolidation effected

by deed No. 179, executed before notary Angel Padró, of Yauco, on November 28, 1907.

"Number Two: A piece of rural property known as 'Los Indios' lying in the 'Indios' barrio, within the municipal district of Guayanilla, with an area of 430 cuerdas, equivalent to 169 hectares, 69 centiares, applied to sugar canes, pastures, saltpeter works and woods. There is built thereon a frame house, roofed with galvanized iron and in part with shingles; another frame house, peon quarters, a house for overseers and some other buildings. It is bounded: on the north by the road leading from the 'Barina' barrio to the 'Indios' barrio of Guayanilla, by land of the sugar cane plantation owned by Trujillo & Mercado & Compania, now Mario Mercado e Hijos, and by land of the Heirs of Juan Irizarry; on the east by land of Gabriel Garcia, by land of the Faro plantation owned at present by Mario Mercado e Hijos and formerly by Trujillo Mercado & Compania and by mangroves of the maritime zone, on the south by the Yauco river and by land of the 'Mercedes' plantation owned by Lluberas Hermanos, and on the west by land of Ulises Olivieri and by land of the Heirs of Antonio Perez.

"Title: This jointly owned interest was acquired by Mrs. Elvira Olivieri y Commins by inheritance from Josefa Commins y Raldiris and it is recorded in the Registry of Property in the name of Mrs. Elvira Olivieri Commins on Folio 222 of Volume 12 of Guayanilla, Estate No. 534, First record.

"Second: That the estates above described are encumbered by a lease constituted in favor of Mario Mercado e Hijos by deed No. 55, executed on April 5, 1927, before notary Francisco Parra Capo, of Ponce.

"Third: Mrs. Elvira Olivieri Commins acknowledges to be indebted to the partnership Mario Mercado e Hijos in the sum of $41,256.89 by reason of a current account with liquidated interest up to March 23, 1932.

"Fourth: Mrs. Elvira Olivieri Commins has agreed to pay

to the partnership Mario Mercado e Hijos the amount owed by her, as hereinafter expressed, and to that effect she executes:

"First: Mrs. Elvira Olivieri Commins, in payment of the amount owed by her to the partnership Mario Mercado e Hijos, as stated in the preceding third paragraph, executes and delivers to said partnership, through the attorney-in-fact, Arturo Cortes Valls, four promissory notes payable to bearer by endorsement, to fall due all of them on March 23, 1939, and subscribed by said lady for the following amounts:

"Promissory note No. One for $10,000.00 as principal, $2,700.00 for interest thereon and $500.00 for costs.

"Promissory note No. Two for $10,000.00 as principal, $2,700.00 for interest thereon and $500.00 for costs.

Promissory note No. Three for $10,000.00 as principal, $2,700.00 for interest thereon and $500.00 for costs.

"And promissory note No. Four for $11,256.89 as principal, $3000.00 for interest thereon and $500.00 for costs.

"Said promissory notes shall differ from each other only in their correlative numbers and amounts. They are as follows:

"No. . For $. To become due . I promise to pay to the holder by indorsement of the promissory note on day, 193 , the sum of received to my entire satisfaction as a loan. This amount will bear interest at 9% annually until fully paid, payable semi-annually at the expiration of each semester. This is promissory note No. , of a series of four, totalling $. To secure the above sum, $ for interest thereon and $ for costs, expenses, disbursements and attorney's fees I have executed a voluntary mortgage in favor of the holder by indorsement of said promissory notes in public deed No. 13 of even date before notary Fernando Zapater, acting in the place of Jose Tous Soto, upon a one-half interest belonging to me in two jointly owned estates, one of them called 'Juanita', with an area of 481.77 cuerdas more or less, lying in the 'Pueblo' and 'Que-

brada' barrios of the municipal district of Guayanilla, Puerto Rico, and the other called 'Los Indios', with an area of 430 cuerdas, lying in the 'Indios' barrio of the municipal district of Guayanilla, Puerto Rico. Mayaguez, Puerto Rico, March 23, 1932.

(Sgd.) Elvira Olivieri.

Affidavit No. . Subscribed before me by Mrs. Elvira Olivieri Commins, of age, a divorcee, property owner, and domiciled in Yauco, Puerto Rico, whom I certify to know personally in Mayaguez, Puerto Rico, on March 23, 1932.

(Sgd.) F. Zapater,
Notary Public.

There is affixed thereto and cancelled a $0.25 internal revenue stamp and affixed thereto the notarial seal.

"Second: Mrs. Elvira Olivieri Commins constitutes a voluntary mortgage upon her jointly owned interests in each of the estates above described to secure all and each of the promissory notes referred to in the foregoing clause, which lien shall encumber such condominiums until the mortgage hereby constituted is legally cancelled. Said mortgage will secure, in addition to the principal of the aforesaid promissory notes, the sum of $11,100.00 for interest thereon and $2,000.00 for costs, expenses, disbursements and attorney's fees in case of judicial recovery and demandable as a penalty in such event without the necessity of a liquidation.

"Third: Mrs. Elvira Olivieri Commins and Mr. Arturo Cortes y Valls, in behalf of the partnership Mario Mercado e Hijos, appraise the mortgaged condominiums, waiving any new appraisal or action for such purpose, as follows:

"The jointly owned interest in the estate described in the first place at $25,000.00.

"The jointly owned interest in the estate described in the second place at $50,000.00.

"Fourth: Mrs. Elvira Olivieri Commins agrees with the

partnership Mario Mercado e Hijos, that out of the rentals to which she is entitled under the contract of lease referred to in the second paragraph of said deed, that is, the sum of $4,100.00, said partnership shall retain, to be applied to the payment of the interest accrued, the sum required to cover the above amount, such retention to begin on June 2, 1932, and so on every time the same becomes due, that is, on March 4 and June 2 of each year.

"Fifth: It is stipulated that by failing to pay three installments of interest upon becoming due, the obligor shall forfeit the right to avail herself of the term allowed for paying the principal and the obligee may recover judicially on all or either of the promissory notes by means of a summary or an ordinary action.

"Sixth: If at the termination of the contract of lease referred to in paragraph second of this instrument, the mortgage promissory notes have not been paid, the obligor or her assignees or successors in interest bind themselves to impose upon any lessee the obligation to deduct from the rentals agreed upon the necessary sums for the payment of the interest owing to Mario Mercado e Hijos and to effect such payment to said partnership on the account of the obligor, as stipulated in clause 4 of this deed.

"Seventh: Option to Purchase and Sell and to Lease. Notwithstanding the foregoing clause, the debtor, as part of the consideration of this contract, agrees with the partnership Mario Mercado e Hijos, so long as the mortgage credit herein constituted is not paid, to grant it priority to purchase and sell or lease her undivided joint interests in the estates 'Indios' and 'Juanita' upon the same price and terms. To this effect, the debtor shall advise, unless such mortgage credit is paid, by registered letter to Mario Mercado e Hijos, of any offer of sale or lease made to her and said partnership shall be granted thirty days for accepting or refusing such offer and during said period the debtor cannot sell or

lease to anybody else. Should there be a sale or lease in violation of this agreement, Mario Mercado e Hijos shall be entitled to repurchase from the purchaser or lessee, which right it can exercise for thirty days from the record of such sale or lease for subrogating itself to the place, degree or priority of the purchaser or lessee.

"Eighth: Waiver of Homestead. Mrs. Elvira Olivieri Commins states that no homestead right has been constituted by her on any of the estates hereinbefore described, but that should she do so in the future, from now on and for all time, she waives the same in favor of the partnership Mario Mercado e Hijos, its assignees or successors in interest, in consideration of the present contract and during the life thereof.

"Ninth: It is stipulated by the parties that the obligor may pay at any time before maturity the mortgage credit herein constituted or to pay on account thereof any amount not below $5,000.00, provided she serves notice on the obligee three months prior to the time when she intends to effect the payment of the principal or the sum on account of such principal.

"Tenth: The parties likewise expressly state that the lessor has received all back rentals up to date regarding the estate described and that in the present case she has received a check for $1,500.00 on the Banco de Ponce in settlement of the annual installment becoming due in the current month of March.

"Eleventh: The parties likewise agree that the actual partition of said estates cannot be carried out without the consent of Mario Mercado e Hijos so long as the mortgage herein constituted is in force.

"Twelfth: For the purpose of the Registry, the mortgage lien affecting the condominiums is prorated as follows:

"The jointly owned interest in the estate described in the first place shall answer for:

"The sum of $12,379.08 as principal,—

"The sum of $3,330.00 as interest,—

"The sum of $600.00 for costs.

"And the jointly owned interest in estate No. Two shall answer for the sum of $28,877.81 as principal,—

"The sum of $1,400.00 for costs, expenses and attorney's fees, and for interest on $7770.00.

"Thirteenth: All the expenses incurred by reason of the present deed, copy thereof and record in the Registry of Property, and those of cancellation at the proper time, copy thereof, and record shall be for the account of the obligor.

"Fourteenth: Each of the parties hereto, as far as the same is concerned, agree to the present deed in every respect as conformable to the terms agreed upon.

"It was so stated, executed and signed in the presence of witnesses Jose Nadal Grau and Oscar Souffront, residents of this district, of age, qualified and known to me. This deed has been read by me to the parties and to the witnesses upon their waiving the right to do so themselves, which I warned them they could do, its contents was ratified by the parties and they and the witnesses affixed their signatures,—in witness whereof and of everything stated, I, the notary, Certify. At this stage, it is set down by the parties that the sum referred to in the third paragraph of this deed as owed by Mrs. Elvira Olivieri Commins to the partnership Mario Mercado e Hijos amounting to $41,256.89, represents the total of the amount due up to date in every respect.

"(Sgd.) Elvira Olivieri.
A. Cortes.
Dr. J. Nadal Grau.
Oscar Souffront.

"Signed, signeted, sealed and paraphed:

F. Zapater."

Second: That Mrs. Belen Gonzalez, widow of Tous, in her own right and in behalf of the parties represented by her, and her major children appearing herein, have agreed with the partnership Mario Mercado e Hijos upon the assignment of the aforesaid mortgage credit and pursuant thereto they agree as follows:

First

Mr. Maria Mercado y Montalvo, as the sole managing partner of the agricultural civil partnership known as Mario Mercado e Hijos, hereby conveys, renounces and assigns in favor of Mrs. Belen Gonzalez, widow of Tous, in the representation in which she appears in this execution and in her own right, and to Dona Ana Rosa Tous de Carrion, Dona Luz Belen Tous de Usera, Dona Alicia and Dona Celia Tous y Gonzalez, the mortgage credit constituted by the deed above transcribed, the assignor subrogating the assignees to its rights in the same degree and priorities by delivering to them in this act and in my presence and that of the witnesses the four mortgage promissory notes above mentioned duly endorsed, to all of which, I, the notary, certify.

Second

It is hereby made known that in the mortgage credit above referred to and which has been the subject matter of the assignment in the present instrument, Dona Belen Gonzalez, widow of Tous, owns an interest amounting to $21,256.89, and the balance, that is, the sum of $20,000.00 is prorated share and share alike among all her major children represented by her in this transaction.

Third

The parties expressly agree that although it is true that in the said mortgage deed, which is the subject matter of this assignment, the rate of interest agreed upon is 9% annually, the fact is that in consideration of the obligation that will be hereinafter assumed by the partnership Mario Mercado e Hijos to pay the interest to be accrued by monthly installments at the end of each

month, said partnership Mario Mercado e Hijos shall be entitled to retain 3/4 of 1% annually of the aforesaid interest during the life of this mortgage, as a consideration, as above stated, of the obligation to be assumed in the next clause of this deed.

Fourth

The partnership Mario Mercado e Hijos binds itself to pay to the assignees in monthly installments at the end of each month the interest on the mortgage hereby assigned at the rate of 8-1/4% annually.

Fifth

The partnership Mario Mercado e Hijos, through its managing partner, Mr. Mario Mercado Montalvo, and the latter in his own behalf, hereby constitute themselves in solidary sureties, not only for the principal of the mortgage assigned hereby, but also for the amount of interest on said mortgage during all the time comprised between now and the payment in full of principal and interest.

Sixth

The parties expressly agree that in case of the assignor, the partnership Mario Mercado e Hijos, should fail to pay the proper interest at maturity of any of the monthly installments, said partnership shall not be considered to be in default and shall not be compelled to effect the payment until the expiration of thirty days from the time of said installment becoming due.

Seventh

The assignment set out in the first clause of this instrument is made for the consideration of $41,256.89 delivered in this act to Mr. Mario Mercado Montalvo as manager of the partnership Mario Mercado e Hijos and in my presence and that of the witnesses, to which I certify, by the assignees, in a certified check on the National City Bank for which sum he gives the proper release and acquittance.

Eighth

It is likewise stipulated and agreed that any tax, excise or impost that might be levied upon the principal of or interest on the mortgage the subject matter of this assignment, by either the Federal Government or the Insular Government, or any municipality, shall be paid for the account of and chargeable to the partnership Mario Mercado e Hijos.

Ninth

It is likewise agreed that the partnership Mario Mercado e Hijos shall see to it that payment is timely made of the taxes upon the estates encumbered by the mortgage that is hereby assigned, and in case of failure on the part of the mortgagor to pay the same, the partnership Mario Mercado e Hijos will pay them within the proper semester.

Tenth

The parties in their respective rights and representations accept the present deed as drafted, as conforming to the terms agreed upon by them; and I, the notary, in accordance with law, call their attention to their rights and duties under the law concerning this execution.

It is so stated and executed in my presence and that of the witnesses, legally qualified, domiciled in this district and known to me, Mr. Rafael Torres and Mr. Julio Mirailh.

The present deed has been read by the parties and the witnesses, in the exercise of their right as advisd by me, its contents was approved by the parties and all of them affixed their signatures before me the notary, who certify to everything set down.

(Sgd.) MARIO MERCADO MONTALVO.
BELEN G., widow of Tous Soto.
CELIA TOUS GONZALEZ.
ALICIA TOUS GONZALEZ.
LUZ B. TOUS DE USERA.
J. MIRAILH.
RAFAEL TORRES.

Signed, signeted, sealed and paraphed:

F. Zapater.

The following initials appear on all the folios of this deed: B.G.T. The proper internal revenue stamps are affixed hereto and cancelled. This is a true and faithful copy of its original to which I refer and which is on file in my current protocol of public instruments of this my notarial office under number marked at the head thereof. In witness whereof and at the request of interested party I issue the present copy which I sign, signet, paraph and seal in Ponce, Puerto Rico, on the same day, month and year of its execution.

(Signed, signeted, sealed and paraphed:

F. Zapater.

There is affixed hereto and cancelled a $5.00 internal revenue stamp, and all the folios have been stamped with the notarial seal and that of the Registry of Property.)

On the back of the last page the following appears: "A $0.50 internal revenue stamp is cancelled." Likewise there appears the imprint of a rubber stamp with the following legend: "Presented at 8:45 A.M. on this day. Entered on folio 77 of Vol. 164 of the Daybook. Ponce, P.R., May 11, 1933.

The Registrar: (Sgd.) M. Planellas."

Here the seal of the Registry of Property has been duly stamped. Further on it reads:

"A $0.50 internal revenue stamp cancelled in accordance with No. 7 of the Schedule of Fees."

"This instrument has been recorded having others on view with the curable defect that the purchaser Ana Rosa Tous y Gonzalez has not been legally represented in the execution thereof, mention of which being made on the margin of the description of each of the two estates covered thereby. There

are no liens upon the mortgage assigned. Ponce, May 16, 1933.

The Registrar: (Sgd.) Miguel Planellas."

There are affixed hereto and cancelled internal revenue stamps worth $114.00, and further down the following appears:

"There are affixed hereto and cancelled the following internal revenue stamps: two of $50.00 each; one of $10.00, and eight of $0.50 each, in compliance with No. 5 of the Schedule of Fees and the Political Code. Date *ut supra.*

(Sgd.) Miguel Planellas."

(On the margin of page 7 of this deed there is a note of the Registrar of Property which reads: "Volume 16 of Guayanilla, back of folio 24, estate No. 711, 12th record." This is on the margin of the estate described under No. One on the aforesaid page.")

(A notice appears on the margin of the record of the property described and marked No. Two, on page 9 of the said deed, reading as follows: "Volume 33 of Guayanilla, folio 201, estate No. 534 triplicate, 14th record.") (The following appears on the cover page: "Attorney Fernando Zapater Martinez, Attorney and Notary Public—No. 33— Assignment of Mortgage Credit—Executed by Mrs. Belen Gonzalez, widow of Tous, et als., and Mario Mercado Montalvo, as the attorney-in-fact of the partnership Mario Mercado e Hijos on May 9, 1933. Ponce, Puerto Rico.")

In the District Court for the Judicial District of Ponce, Puerto Rico.—Belen G. widow of Tous Soto—Ex-parte—Civ. No. 203—*In re:* Judicial Administration.

After a hearing at which oral and documentary evidence was heard, the court ordered a transcript of the stenographic notes and their submission to the district attorney for a written report thereon, and once this is done, the court will decide. (From Minutes Book No. 31, First Section, sitting of March 4, 1937,

presided by Hon. Judge Sepulveda. I Attest: (Sgd.) E. Gotay Purcell, Clerk.)

In the District Court for the Judicial District of Ponce, Puerto Rico.—Belen Gonzalez, Widow of Tous, as Mother with *Patria Potestas* Over the Minor Hector Tous Gonzalez and Guardian of Jose Tous Gonzalez, Incapacitated, Petitioner.—Ex Parte—Civil No. 203—*In re:* Judicial Authorization.

STENOGRAPHIC NOTES

On March 3, 1937, this case was called for the hearing of the evidence, the court being presided by Hon. Domingo Sepulveda, Judge. The petitioner was represented by her counsel, attorney Fernando Zapater Martinez.

Attorney: In conversation with the district attorney Perez Marchand we were advised by him to hold the hearing, to submit the evidence and to forward the stenographic notes to his office for a favorable report thereon by him.

Judge: I have already sent for the district attorney. What did he say?

Marshal Rodriguez: He is coming right away; he is hearing a testimony which will be over soon.

Judge: Did you say that that had been agreed upon?

Attorney: Yes.

Judge: Let us proceed.

Attorney: An interest in said mortgage amounting to $21,256.89 was subsequently assigned by Mario Mercado e Hijos to Mrs. Belen Gonzalez, widow of Tous, and the $20,000.00 balance was assigned to the nine children of Mr. Jose Tous Soto, there being allotted to each of said children the sum of $2,222.22-2/9. One of the children of Mr. Jose Tous Soto called Jose Tous Gonalez is incapacitated, whose guardian is the widow of Mr. Tous Soto, that is, the petitioner, and there is a minor son called Hector.

The mortgagor desires to cancel said mortgage, availing herself of a clause in the mortgage; and in order to be able to cancel such mortgage, authorization from the court is necessary for the

cancellation thereof as regards the incapacitated one and the minor, a deposit being effected in the office of the clerk of the amount corresponding to the minor and to the incapacitated one, respectively.

Judge: Let the evidence be submitted.

Petitioner's Evidence

Attorney: We are to submit in evidence deed No. 33 of March 9, 1933, executed before notary Fernando Zapater by virtue of which Mario Mercado e Hijos assigned a mortgage to Mrs. Belen Gonzalez, widow of Tous. Said mortgage was constituted to secure four promissory notes amounting to $41,256.89.

I want to take the stand because in this matter I am better posted than the widow of Tous Soto herself.

Judge: The deed is admitted.

(Mr. Zapater is sworn in.)

Verified Testimony of Attorney Fernando Zapater Martinez.

Witness: My name is Fernando Zapater. I am an attorney, domiciled in Ponce.

Judge: Of age.

Witness: I am over 21 years of age. I appear in the present case as the attorney of Mrs. Belen Gonzalez, widow of Tous Soto. I am well posted in all matters connected with the Heirs of Tous Soto because I was the notary who intervened in the inventory, appraisal and adjudication of the property. The estate of Mr. Tous Soto included the sum of $41,256.89 in cash, and was invested, with the authorization from this Court, in the purchase of a mortgage credit owned by Mario Mercado e Hijos for $41,256.89. The share of this mortgage corresponding to the widow of Tous Soto, Mrs. Belen Gonzalez, petitioner herein, was the sum of $21,256.89 and the balance of $20,000.00 was prorated among the children of Jose Tous Soto of which six are majors, one is a minor and one is incapacitated. The name of the incapacitated one is Jose Tous Gonzalez, who is represented by the petitioner herein, who was appointed guardian of the incapacitated

one and the name of the minor is Hector, who is not yet fourteen years old.

There is a clause in the mortgage, as appears from the deed submitted in evidence, to the effect that the mortgagor may at any time cancel the mortgage provided the interest for three months thereon is paid to the mortgagee. The mortgagor herein is ready to fulfill said clause of the deed and has required the Heirs of Tous Soto to cancel the mortgage. All the parties to the same who are of age are willing to cancel the same, the only thing needed is authorization from the Court to the guardian mother to appear in the proper deed of cancellation. The share belonging to the minor and to the incapacitated one is $2,222.22-2/9 each, and such amount is going to be deposited in the office of the clerk to be disposed of conformable to the interests of the minor, the incapacitated one, and to the authorization from the Court. That is all.

Judge: Do you think that that is for the benefit and utility of the Heirs?

Witness: I think that this is useful and beneficial because such sum of money could now be invested at a greater rate of interest in partial amounts than in such a large sum as $40,000.00, and a rate of interest of 9% could be secured, and which is not obtained now, and, moreover, a three-month interest in advance will be paid; and, besides, there is a clause entitling the mortgagor to a cancellation and if such cancellation is not made a suit would ensue which would cause inconvenience and expenses to the incapacitated one and the minor, and I think that it is to the advantage and benefit of the minor and the incapacitated one that the mortgage in the present case should be cancelled.

Judge: Any further statement to make?

Witness: That is all.

Judge: Any further evidence?

Attorney: That is the whole evidence.

Judge: Let the deed and the transcript of the stenographic notes

be attached to the record and submitted to the district attorney for a written report.

I, Jose Cruz Montero, court stenographer for the District Court for the Judicial District of Ponce, Puerto Rico, Do Hereby Certify:

That the foregoing is a true and faithful transcript of the stenographic notes taken by me during the hearing of Civil Case No. 203, Belen G., widow of Tous Soto, petitioner, *In re:* Judicial Authorization;—

And I Further Certify that said stenographic notes were faithfully and accurately taken and they faithfully and accurately represent the statements made at the hearing.

And by order of the Court, and for attaching to the record in said Civil Case No. 203, Belen Gonzalez Salicrup, widow of Tous Soto, *In re:* Judicial Authorization, I issue this certificate in Ponce, Puerto Rico, on this the 5th day of March 1937, for all legal purposes.

Court stenographer for the
District Court for the Judicial
District of Ponce, Puerto Rico.

In the District Court for the Judicial District of Ponce, Puerto Rico.—Belen Gonzalez Salicrup, Widow of Tous, as Mother with *Patria Potestas* Over the Minor Hector Tous Gonzalez and Guardian of Jose Tous Gonzalez, Incapacitated, Petitioner.—Ex Parte—Civil No. 203—*In re:* Judicial Authorization.—

REPORT OF THE DISTRICT ATTORNEY

I, the undersigned district attorney, having examined the present record, hereby report to the Court that I have no objection to the granting of the petition in question.

Ponce, Puerto Rico, March 2, 1937.

(Sgd.) R. V. Pérez Marchand,
District Attorney.

In the District Court for the Judicial District of Ponce, Puerto Rico.—Belen Gonzalez Salicrup, Widow of Tous, as Mother with *Patria Potestas* Over the Minor Hector Tous Gonzalez, and Guardian of Jose Tous Gonzalez, Incapacitated, Petitioner.—Ex Parte—Civil No. 203—*In Re:* Judicial Authorization.—

ORDER

Whereas: Mrs. Belen Gonzalez Salicrup, widow of Tous, appeared before this court through her attorney Fernando Zapater Martinez, and alleged: that petitioner is over 21 years of age; property owner; domiciled in Ponce and mother with *patria potestas* over the minor Hector Tous Gonzalez, 17 years old, who is property owner and domiciled in Ponce and guardian of Jose Tous Gonzalez, incapacitated, over 21 years of age, who is property owner, and a casual resident of San Juan, Puerto Rico, which office was accepted and was sworn in before this court by the petitioner as appears from the proper Registry of Guardianship.

Whereas: It is further alleged that by public deed No. 33 of May 9, 1933, executed before notary Fernando Zapater Martinez, recorded in Vol. 16 of Guayanilla, back of folio 24, estate No. 711, 12th record and in Vol. 33 of Guayanilla, folio 201, estate No. 534 triplicate, 14th record, Mr. Mario Mercado Montalvo, as managing partner of the agricultural civil partnership Mario Mercado e Hijos, domiciled in Guayanilla, Puerto Rico, and, moreover, in his own right, assigned to Mrs. Belen Gonzalez, widow of Tous, petitioner herein, in her own right and, moreover, as mother with *patria potestas* over her then minor children Belen-Maria, Gladys and Jorge; and Hector Tous Gonzalez still a minor, and as guardian of Jose Tous Gonzalez, incapacitated; Luz Belen, Ana Rosa, Celia and Alicia Tous Gonzalez, a mortgage credit constituted by public deed No. 13, executed in Mayaguez, on March 23, 1932, before notary Fernando Zapater Martinez, acting in the place of Mr. Jose Tous Soto, by Mrs. Elvira Olivieri Commins, upon one-half jointly owned interest in the immovables described as follows:

"Number One: A piece of rural property known as 'Juanita' lying in the 'Pueblo' and 'Quebrada' barrios within the municipal district of Guayanilla. It contains 481.77 cuerdas more or less, equivalent to 189 hectares, 35 ares and 45 centiares, partly flat land applied to sugar canes and partly hilly and wooded land. There is built thereon a dwelling frame house raised from the ground, with galvanized-iron roof, and a shed for storing produce. It is bounded: on the north by land of Rafael Lopez, of the 'Rufina' plantation belonging to Mario Mercado e Hijos, and the Heirs of Domingo Torres represented by Isabel Yordan; on the south by said 'Rufina' plantation; on the west by land of the 'San Rafael' plantation owned by the Heirs of Franceschi, by land of Andres Negroni and by land of Antonio Ramos. On the north (*sic*) by land of the latter, by land of the Heirs of Ramon Lopez, by land of Joaquin Lugo and by the road leading to 'Piedras Blancas' barrio, and on the opposite side by land of Antonio Llabres. Said estate is crossed by part of the railroad track.

"Number Two: A piece of rural property known as 'Los Indios' lying in the 'Indios' barrio within the municipal district of Guayanilla, with an area of 430 cuerdas, equivalent to 169 hectares, 69 centiares, applied to sugar canes, pastures, saltpeter works and woods. There is built thereon a frame house, roofed with galvanized iron and in part with shingles; another frame house, peon quarters, a house for overseers and some other buildings. It is bounded: on the north by the road leading from the 'Barina' barrio to the 'Indios' barrio of Guayanilla, by land of the sugar cane plantation owned by Trujillo & Mercado & Compania, now Mario Mercado e Hijos and by land of the Heirs of Juan Irizarry; on the east by land of Gabriel Garcia, by land of the Faro plantation owned at present by Mario Mercado e Hijos and formerly by Trujillo Mercado & Compania and by mangroves of the maritime zone; on the south by the Yauco river and

by land of the 'Mercedes' plantation owned by Lluberas Hermanos, and on the west by land of Ulises Olivieri and by land of the Heirs of Antonio Perez."

Whereas: It is likewise alleged: that said mortgage was constituted to secure four promissory notes payable to holder by indorsement, to mature all of them on March 23, 1939, and subscribed by said lady for the following amounts: Note No. 1 for $10,000.00 as principal, $2,700.00 for interest and $500.00 for costs; note No. 2 for $10,000.00 as principal, $2,700.00 for interest and $500.00 for costs; note No. 3 for $10,000.00 as principal, $2,700.00 for interest and $500.00 for costs; and note No. 4 for $11,256.89, as principal, $3,000.00 for interest and $500.00 for costs. Said mortgage secures, in addition to the principal of the said notes, the sum of $11,100.00 for interest and $2,000.00 for costs, expenses, disbursements and attorney's fees in case of judicial recovery, which notes were, by virtue of the foregoing assignment of mortgage credit, duly endorsed in favor of the Heirs of Jose Tous Soto, already mentioned.

Whereas: It is further alleged that the share of Mrs. Belen Gonzalez, widow of Tous, in said mortgage credit amounts to $21,256.89, and the balance, that is, $20,000.00 belongs in equal shares to all her children, majors and minors, by virtue of which the minor Hector Tous Gonzalez and the incapacitated one, Jose Tous Gonzalez, are entitled each to the sum of $2,222.22-2/9; that the mortgagor, pursuant to clause 9 of the said deed of mortgage, which provides that she may at any time before maturity, cancel said mortgage credit, has sought to cancel said mortgage credit, and the mortgagees, who are of age are ready to cancel the same and have ordered notary Fernando Zapater Martinez to draw up the proper deed.

Whereas: At a hearing on the above petition, with the appearance of the district attorney, all and everyone of the particulars stated were justified to the satisfaction of the court by means of

documentary and oral evidence, and the district attorney reported favorably thereon.

Wherefore: The court hereby authorizes Mrs. Belen Gonzalez Salicrup, widow of Tous, to appear before a notary and to execute the proper deed of cancellation of mortgage as to the shares held therein by the minor Hector Tous Gonzalez and the incapacitated one, Jose Tous Gonzalez, and orders that said shares in the principal of the said mortgage credit belonging to the minor and the incapacitated one above referred to, be deposited in the office of the clerk of this court, to be disposed of in accordance with further orders from this court.

Ponce, Puerto Rico, March 5, 1937.

(Sgd.) D. SEPULVEDA,
District Judge.

In the District Court for the Judicial District of Ponce, Puerto Rico.—Belen Gonzalez Salicrup, Widow of Tous, as Mother with *Patria Potestas* Over the Minor Hector Tous Gonzalez and Guardian of Jose Tous Gonzalez, Incapacitated, Petitioner.—Ex Parte—Civil No. 203—*In Re:* Judicial Authorization.—

PETITION

Now comes petitioner Mrs. Belen Gonzalez Salicrup before this Hon. Court and through her undersigned attorney respectfully states:

1. That in the office of the clerk of this Hon. Court petitioner deposited the sum of $4,444.46 belonging, share and share alike, to her sons Hector Tous Gonzalez, minor, and Jose Tous Gonzalez, incapacitated.

2. That the aforesaid amount is not drawing any interest whatever.

3. That she encloses herewith a letter signed by the manager of the Credito & Ahorro Ponceno, Mr. Angel A. Sanz Padilla, from which it appears that said banking institution will pay in-

terest at the rate of 2% annually on any sum of money exceeding $2,000.00.

4. That by depositing the aforesaid sum in the Credito & Ahorro Ponceno, the petitioner would be paid 2% annually on the moneys at present deposited in the office of the clerk of this Court.

By Virtue Whereof she prays this Hon. Court to order the clerk of the Court to transfer from the account in the office of the clerk of this Court in the name of Hector Tous Gonzalez and Jose Tous Gonzalez to the Credito & Ahorro Ponceno, so that the sum so deposited amounting to $4,444.46 may draw as a profit interest at 2% annually, until said sum could be invested in some other way for the benefit of said minor and incapacitated one.

Ponce, Puerto Rico, May 7, 1937.

(Sgd.) F. ZAPATER,
Attorney fot petitioner.

I, Fernando Zapater Martinez, Do Solemnly Swear:

That I am petitioner's counsel in the present case; that I have drafted and read the above petition and that the facts therein set forth are true and personally known to me. That I make this declaration in the place of petitioner owing to her absence from this district.

(Sgd.) F. ZAPATER.

Sworn to and subscribed before me by Fernando Zapater Martinez, of age, attorney, domiciled in Ponce and married whom I certify to know personally in Ponce, Puerto Ri.

May 7, 1937.

E. Gotay Purcell, Clerk,
District Court of Ponce, P. R.

Served with copy this 7th day of May, 1937.

G. Pierluissi,
District Attorney.

Credito Y Ahorro Ponceno.—Founded in 1895.—Branches in Mayaguez, Yauco, Guayama, Cayey.—Cable Address:-"Credito"—Depositary for the United States—Depositary for Puerto Rico—Ponce, Puerto Rico.—April 29, 1937.—

Mrs. Belen G., widow of Tous Soto, Ponce, Puerto Rico.

My dear Madam:

We take pleasure to confirm hereby our verbal information that we should be glad to pay you 2% annually on any sum deposited by you in this bank, in our savings department, in excess of $1,000.00. We shall also be pleased to pay you this same rate of interest on any sums deposited by you in the same circumstances in behalf of your minor children.

We are, dear madam, your sincere friends,

(Sgd.) ANGEL A. SANZ, Manager.

In the District Court for the Judicial District of Ponce, Puerto Rico.—Belen Gonzalez Salicrup, Widow of Tous, as Mother with *Patria Potestas* Over the Minor Hector Tous Gonzalez and Guardian of Jose Tous Gonzalez, Incapacitated, Petitioner.—Ex Parte—Civil No. 203—*In Re:* Judicial Authorization.—

ORDER

Having considered the foregoing motion and in view of the conformity accorded to it by the district attorney and the written offer from the Credito y Ahorro Ponceno, in which said bank promises to pay 2% of interest annually upon any sum that petitioner may deposit therein, the court hereby orders that the moneys deposited in the office of the clerk of this court by Mrs. Belen Gonzalez Salicrup, as mother with *patria potestas* over the minor Hector Tous y Gonzalez and the incapacitated one, Jose Tous y Gonzalez, amounting to $4,444.46 in the name of said minor and said incapacitated one, be transferred by the clerk of this court to an investment account in the banking institution

"Credito y Ahorro Ponceno" in the name of Hector Tous Gonzalez and Jose Tous Gonzalez, share and share alike.

Ponce, Puerto Rico, May 7, 1937.

(Sgd.) R. H. Todd, Jr.,
District Judge.

(There is a cover page with the following legend: "Fernando Zapater—Attorney and Notary Public—Ponce, Puerto Rico—District Court for the Judicial District of Ponce, Puerto Rico—Case No. 203—Belen G., widow of Tous Soto—*In re:* Judicial Authorization—Fernando Zapater, Counsel for plaintiff.—Date of filing of complaint: March 4, 1937.—Date of inclusion of the case in the calendar: March 4, 1937.—Date of Judgment: March 5, 1937.

"Remarks: Judgment entered on March 6, 1937, on folio 166 of book 107 of civil judgments. 1,000 words. Rec. 295."

EXHIBIT 8 OF THE DEFENDANTS.

No. One. For $10,000.00. To become due on March 23, 1939. I promise to pay to the holder by indorsement of this promissory note on the 23rd day of March, 1939, the sum of Ten Thousand Dollars received to my entire satisfaction as a loan. This amount will bear interest at 9% annually until fully paid, payable semi-annually at the expiration of each semester. This is promissory note No. One of a series of four, totalling $41,256.89. To secure the above sum, $2,700.00 for interest thereon and $500.00 for costs, expenses, disbursements and attorney's fees I have executed a voluntary mortgage in favor of the holder by indorsement of said promissory notes in public deed No. 13 of even date before notary Fernando Zapater, acting in the place of Jose Tous Soto, upon a one-half interest belonging to me in two jointly owned estates, one of them called "Juanita", with an area of 481.77 cuerdas more or less, lying in the "Pueblo" and "Quebrada" barrios of the municipal district of Guayanilla, and the

other called "Los Indios", with an area of 430 cuerdas, lying in the "Indios" barrio of the municipal district of Guayanilla, Puerto Rico. Mayaguez, Puerto Rico, March 23, 1932.

(Sgd.) ELVIRA OLIVIERI.

Affidavit No. 2146.—Subscribed before me by Mrs. Elvira Olivieri Commins, of age, a divorcee, property owner, and domiciled in Mayaguez, Puerto Rico, whom I certify to know personally in Mayaguez, Puerto Rico, on March 23, 1932.

(Sgd.) F. Zapater,
Notary Public.

(There is affixed hereto said notary's paraph, a $0.25 internal revenue stamp duly cancelled and the notarial seal stamped thereon.) (Over the text of this note and handwritten in ink diagonally the following appears: "This promissory note has been cancelled by virtue of a deed of cancellation of even date executed before me. Ponce, Puerto Rico, March 8, 1937.

(Sgd.) F. Zapater,
Notary Public."

There is stamped again next to the signature, the notarial seal and the paraph of said notary.)

(The following appears on the back of this promissory note: "(Sgd. Elvira Olivieri.—For value received. Pay to the order of Dona Belen Gonzalez, widow of Tous, Dona Belen-Maria, Gladys, Jorge, Hector, Jose, Celia and Alicia Tous y Gonzalez, Dona Luz Belen Tous de Usera and Dona Ana Rosa Tous de Carrion. Ponce, P.R., May 9, 1933.—Mario Mercado e Hijos, per (Sgd.) Mario Mercado, Manager.—Affidavit No. 2690.—Subscribed before me by Don Mario Mercado Montalvo, of age, a widower, domiciled in Ponce and manager of the partnership Mario Mercado e Hijos, whom I certify to know personally. Ponce, P.R., May 9, 1933.

(Sgd.) F. Zapater,
Notary Public.

(There is affixed hereto and cancelled a $0.25 internal revenue stamp, and stamped the notarial seal.)

No. Two. For $10,000.00. To become due on March 23, 1939. I promise to pay to the holder by indorsement of this promissory note on the 23rd day of March, 1939, the sum of Ten Thousand Dollars received to my entire satisfaction as a loan. This amount will bear interest at 9% annually until fully paid, payable semi-annually at the expiration of each semester. This is promissory note No. Two of a series of four, totalling $41,256.89. To secure the above sum, $2,700.00 for interest thereon and $500.00 for costs, expenses, disbursements and attorney's fees I have executed a voluntary mortgage in favor of the holder by indorsement of said promissory notes in public deed No. 13 of even date before notary Fernando Zapater, acting in the place of Jose Tous Soto, upon a one-half interest belonging to me in two jointly owned estates, one of them called "Juanita", with an area of 481.77 cuerdas more or less, lying in the "Pueblo" and "Quebrada" barrios of the municipal district of Guayanilla, and the other called "Los Indios", with an area of 430 cuerdas, lying in the "Indios" barrio of the municipal district of Guayanilla, Puerto Rico. Mayaguez, Puerto Rico, March 23, 1932.

(Sgd.) ELVIRA OLIVIERI.

Affidavit No. 2147.—Subscribed before me by Mrs. Elvira Olivieri Commins, of age, a divorcee, property owner, and domiciled in Mayaguez, Puerto Rico, whom I certify to know personally, in Mayaguez, Puerto Rico, on March 23, 1932.

(Sgd.) F. Zapater,
Notary Public.

(There is affixed hereto a $0.25 internal revenue stamp duly cancelled and the notarial seal stamped thereon, as well as the notary's paraph.) (Over the text of this note and handwritten in black ink diagonally the following appears: "This promissory note has been cancelled by virtue of a deed of cancellation of

even date executed before me. Ponce, Puerto Rico, March 8, 1937.

(Sgd.) F. Zapater,
Notary Public."

There is stamped again the notarial seal and the paraph of said notary.)

(The following appears on the back of this promissory note: "(Sgd.) Elvira Olivieri.—For value received. Pay to the order of Dona Belen Gonzalez, widow of Tous, Dona Belen-Maria, Gladys, Jorge, Hector, Jose, Celia and Alicia Tous y Gonzalez, Dona Luz Belen Tous de Usera and Dona Ana Rosa Tous de Carrion. Ponce, P. R., May 9, 1933.—Mario Mercado e Hijos, per: (Sgd.) Mario Mercado, Manager.—Affidavit No. 2691.—Subscribed before me by Don Mario Mercado Montalvo, of age, a widower, domiciled in Ponce and manager of the partnership Mario Mercado e Hijos, whom I certify to know personally. Ponce, P.R., May 9, 1933.

(Sgd.) F. Zapater,
Notary Public.

(There is affixed hereto and cancelled a $0.25 internal revenue stamp, and stamped the notarial seal and the notary's paraph.)

No. Three. For $10,000.00. To become due on March 23, 1939. I promise to pay to the holder by indorsement of this promissory note on the 23rd day of March, 1939, the sum of Ten Thousand Dollars received to my entire satisfaction as a loan. This amount will bear interest at 9% annually until fully paid, payable semi-annually at the expiration of each semester. This is promissory note No. Three of a series of four, totalling $41,-256.89. To secure the above sum, $2,700.00 for interest thereon and $500.00 for costs, expenses, disbursements and attorney's fees I have executed a voluntary mortgage in favor of the holder by indorsement of said promissory notes in public deed No. 13 of even date before notary Fernando Zapater, acting in the place of Jose Tous Soto, upon a one-half interest belonging to me in two

jointly owned estates, one of them called "Juanita", with an area of 481.77 cuerdas more or less, lying in the "Pueblo" and "Quebrada" barrios of the municipal district of Guayanilla, and the other called "Los Indios", with an area of 430 cuerdas, lying in the "Indios" barrio of the municipal district of Guayanilla, Puerto Rico. Mayaguez, Puerto Rico, March 23, 1932.

(Sgd.) ELVIRA OLIVIERI.

Affidavit No. 2148.—Subscribed before me by Mrs. Elvira Olivieri Commins, of age, a divorcee, property owner, and domiciled in Mayaguez, Puerto Rico, whom I certify to know personally, in Mayaguez, Puerto Rico, on March 23, 1932.

(Sgd.) F. Zapater,
Notary Public.

(There is affixed hereto said notary's paraph, a $0.25 internal revenue stamp duly cancelled and the notarial seal stamped thereon.) (Over the text of this note and handwritten in black ink diagonally the following appears: "This promissory note has been cancelled by virtue of a deed of cancellation of even date executed before me. Ponce, Puerto Rico, March 8, 1937.

(Sgd.) F. Zapater,
Notary Public."

There is stamped again next to the signature, the notarial seal and the paraph of said notary.)

(The following appears on the back of this promissory note: "(Sgd.) Elvira Olivieri.—For value received. Pay to the order of Dona Belen Gonzalez, widow of Tous, Dona Belen-Maria, Gladys, Jorge, Hector, Jose, Celia and Alicia Tous y Gonzalez, Dona Luz Belen Tous de Usera and Dona Ana Rosa Tous de Carrion. Ponce, P.R., May 9, 1933. Mario Mercado e Hijos, per: (Sgd.) Mario Mercado, Manager.—Subscribed before me by Don Mario Mercado Montalvo, of age, a widower, domiciled in Ponce and manager of the partnership Mario Mercado e Hijos, whom I

certify to know personally. Ponce, P.R., May 9, 1933.—Affidavit No. 2692—(Sgd.) F. Zapater, Notary Public."

(There is affixed hereto and cancelled a $0.25 internal revenue stamp, and stamped the notarial seal as well as said notary's paraph.)

No. Four. For $11,256.89. To become due on March 23, 1939. I promise to pay to the holder by indorsement of this promissory note on the 23rd day of March, 1939, the sum of Eleven Thousand Two Hundred and Fifty-Six Dollars and 89/100 received to my entire satisfaction as a loan. This amount will bear interest at 9% annually until fully paid, payable semi-annually at the expiration of each semester. This is promissory note No. Four of a series of four, totalling $41,256.89. To secure the above sum, $3,000.00 for interest thereon and $500.00 for costs, expenses, disbursements and attorney's fees I have executed a voluntary mortgage in favor of the holder by indorsement of said promissory notes in public deed No. 13 of even date before notary Fernando Zapater, acting in the place of Jose Tous Soto, upon a one-half interest belonging to me in two jointly owned estates, one of them called "Juanita", with an area of 481.77 cuerdas more or less, lying in the "Pueblo" and "Quebrada" barrios of the municipal district of Guayanilla, and the other called "Los Indios", with an area of 430 cuerdas, lying in the "Indios" barrio of the municipal district of Guayanilla, Puerto Rico. Mayaguez, Puerto Rico, March 23 1932.

(Sgd.) ELVIRA OLIVIERI.

Affidavit No. 2149.—Subscribed before me by Mrs. Elvira Olivieri Commins, of age, a divorcee, property owner and domiciled in Mayaguez, Puerto Rico, whom I certify to know personally, in Mayaguez, Puerto Rico, on March 23, 1932.

(Sgd.) F. Zapater,
Notary Public.

(There is affixed hereto a $0.25 internal revenue stamp duly cancelled and the notarial seal stamped thereon as well as the

notary's paraph.) (Over the text of this note and handwritten in black ink diagonally the following also appears: "This promissory note has been cancelled by virtue of a deed of cancellation of even date executed before me. Ponce, Puerto Rico, March 8, 1937. (Sgd.) F. Zapater, Notary Public." There are duly stamped the paraph and the notarial seal of said notary.)

(The following appears on the back of this promissory note: "(Sgd.) Elvira Olivieri.—For value received. Pay to the order of Dona Belen Gonzalez, widow of Tous, Dona Belen-Maria, Gladys, Jorge, Hector, Jose, Celia and Alicia Tous y Gonzalez, Dona Luz Belen Tous de Usera and Dona Ana Rosa Tous de Carrion. Ponce, P.R., May 9, 1933. Mario Mercado e Hijos, per: (Sgd.) Mario Mercado, Manager.—Subscribed before me by Don Mario Mercado Montalvo, of age, a widower, domiciled in Ponce and manager of the partnership Mario Mercado e Hijos, whom I certify to know personally. Ponce, P.R., May 9, 1933.

(Sgd.) F. Zapater,
Notary Public.

Affidavit No. 2693.

(There is affixed hereto and cancelled a $0.25 internal revenue stamp, and stamped the notarial seal and the notary's paraph.)

EXHIBIT 9 OF THE DEFENDANTS.

Ponce, Puerto Rico, November 7, 1939.

Registrar of Property for the Ponce District, P.R.—

Sir: In behalf of Mr. Manuel Francisco Lluberas Pasarell, and as his attorney, I beg of you to please furnish me with a verified literal copy of the entry which gave rise to deed No. 33 of May 9, 1932, executed before notary Fernando Zapater Martinez in connection with estate No. 711 duplicate, record 12 on the back of folio 24, of Volume 16 of Guayanilla and with estate No. 534 quadruplicate, record 14 in folio 201 of Volume 33 of Guayanilla.

I likewise beg of you to certify to the following:

(A) If it appears from your registry whether upon execution

of the deed of assignment by the partnership Mario Mercado e Hijos to Dona Belen Gonzalez Salicrup, widow of Tous Soto, and her children Ana Rosa Tous de Carrion, Luz Belen Tous de Usera, Alicia, Celia, Belen-Maria, Gladys and Jorge and Hector Tous y Gonzalez, said assignor partnership Mario Mercado e Hijos, or somebody other than said assignor, reserved to itself the option to purchase and to lease in connection with the record which gave rise to the mortgage referred to in record 12 of said estate No. 534 duplicate, on the back of folio 152 of Volume 33 of Guayanilla and the 10th record of estate No. 711 duplicate, on the back of folio 22 of Volume 16 of Guayanilla.

(B) If upon the cancellation of the mortgage referred to in record 16 of estate No. 534 quadruplicate, on the back of folio 187 of Vol. 36 of Guayanilla, and referred to in the 12th record of estate No. 711 duplicate, on folio 1 of Volume 34 of Guayanilla, there was kept alive in any form, according to your registry, said clause of option to purchase and lease referred to in the 12th record of estate No. 534 duplicate already mentioned and the 10th record of estate No. 711 duplicate, already mentioned.

I enclose internal revenue stamps worth $4.00 to cover any fees required to this effect or any other that might be required by law.

Respectfully,

(Sgd.) LEOPOLDO TORMES,
Attorney for Mr. Manuel Francisco Lluberas Pasarell.

(There is stamped hereon the seal of the registry of property.)

R-723. Aug. 7, 1939. 10,000.

Department of Justice of Puerto Rico.
Registry of Property Ponce, P.R.

I, Miguel Planellas Yanez, Registrar of Property of Ponce, Puerto Rico, and its Mortgage District, Do Hereby Certify:

1. That the records entered by reason of the copy of deed No. 33, executed on May 9, 1932, before notary Fernando Zapater

Martinez, referred to in the foregoing application, literally transcribed read as follows:

(a) 14th record of estate No. 534 triplicate, on folio 201 of Volume 33 of Guayanilla:

"14th. Rural: Estate known as 'Los Indios', described in its previous record 10 just as in the instrument presented. There are no liens upon the credit the subject matter of this entry. The agricultural civil partnership Mario Mercado e Hijos, domiciled in Guayanilla, Puerto Rico, known as Mario Mercado e Hijos, acquired a mortgage credit upon a 1/2 undivided joint interest in this estate and in that referred to on the margin, amounting to $41,256.89 as principal, the value of four promissory notes, $11,000.00 for interest and $2,000.00 for costs, expenses, disbursements and attorney's fees in case of judicial recovery, said jointly owned interest in this estate being answerable for the sum of $28,877.81 as principal, $7,770.00 for interest and $1,400.00 for costs and other expenses, as appears from the 12th record, *supra*. By deed No. 33, executed in Ponce, on May 9, 1933, before notary Fernando Zapater Martinez, Mr. Mario Mercado y Montalvo, of age, a widower, property owner, domiciled in Ponce, acting in his capacity as the only managing partner of the agricultural civil partnership known as Mario Mercado e Hijos, assigned, renounced and transferred in favor of Mrs. Belen Gonzalez, widow of Tous, of age, property owner, domiciled in Ponce, and of her minor children, under the *patria potestas* of said widow and called Belen Maria, Gladys, Jorge and Hector Tous y Gonzalez, who are, respectively, 20, 19, 17 and 13 years of age, property owners, domiciled in Ponce; in favor of Don Jose Tous Gonzalez, single, of age, property owner, residing at present in San Juan, Puerto Rico; in favor of Dona Luz Belen Tous Gonzalez, married to Don Vicente Usera, Jr., of age, property owner, domiciled in Ponce; in favor of Dona Ana Rosa Tous Gon-

zalez, married to Don Jose B. Carrion, domiciled in San Juan, of age, property owner; and in favor of Dona Celia and Alicia Tous y Gonzalez, both of age, property owners, unmarried, domiciled in Ponce, said mortgage credit upon the said jointly owned interest in said estate and the one mentioned on the margin, the assignor subrogating the assignees to its rights in the same degree and priority, and delivering to them in the act of the execution of the aforesaid deed and in the presence of the notary and of the witnesses, the four mortgage promissory notes already mentioned, duly indorsed, attested to by the notary before whom the deed in question was executed, in which it is set down that the assignment of said mortgage deed is prorated as follows: There is assigned to Dona Belen Gonzalez, widow of Tous, the sum of $21,256.89, and the balance, that is, the sum of $20,000.00, in equal shares, to all her children, the other assignees mentioned above. The consideration for this assignment was the sum of $41,256.89, which Don Mario Mercado y Montalvo, in his capacity as manager of the partnership Mario Mercado e Hijos, received upon the execution of the deed herein referred to and in the presence of the attesting notary, who certified to the delivery, and of the witnesses, from the assignees, in a certified check on the National City Bank. It is expressly agreed between the parties that although in the deed of constitution of mortgage, assigned herein, the rate of interest stipulated is 9% annually, it is a fact that as a consideration for the obligation to be assumed further on by the partnership Mario Mercado e Hijos to pay in monthly installments at maturity the interest to be accrued, that said partnership Mario Mercado e Hijos shall be entitled to retain 3/4 of 1% annually of the aforesaid interest during the life of this mortgage. The partnership Mario Mercado e Hijos binds itself to pay by monthly installments payable at the end of each month to the assignees the interest on the mortgage so assigned at the rate

of 8-1/4% annually. Mr. Mario Mercado y Montalvo, in his own behalf and as the managing partner of the partnership Mario Mercado e Hijos, becomes a solidary surety, both as regards the principal of the mortgage hereby assigned as well as the amount of interest on said mortgage, for the whole time between the date of the deed referred to, until said principal and interest are fully paid. It is expressly agreed between the parties that should the assignor, Mario Mercado e Hijos, fail to pay the proper interest at maturity of any of the monthly installments thereof, said Mario Mercado e Hijos shall not be understood to be in default and shall not be called upon to effect the payment until after the lapse of thirty days from maturity of each monthly installment. It is likewise stipulated and agreed that any tax, excise or impost to be assessed upon the principal or interest of the mortgage hereby assigned, by the federal or insular governments or any municipality, shall be for the account of and chargeable to the partnership Mario Mercado e Hijos. It is likewise agreed that the partnership Mario Mercado e Hijos shall see to it that the proper taxes upon this estate and the one mentioned on the margin, shall be timely paid, and in the event that the mortgagor fails to pay the same, the partnership Mario Mercado e Hijos shall satisfy the same within the proper semester. Dona Belen Gonzalez, widow of Tous, who besides appearing at the execution of the deed in question in her own behalf, appeared also as mother with *patria potestas* over her minor children called Belen-Maria, Gladys, Jorge and Hector Tous y Gonzalez, and, moreover, as the guardian of Don Jose Tous Gonzalez, was duly authorized to appear at said assignment in her latter capacities by order of the District Court of Ponce made by Judge D. Sepulveda on May 5, 1933, in civil case No. 7,850, a certified copy of which, issued by A. Maldonado, deputy clerk of the District Court of Ponce, acting in the place of clerk E. Gotay Purcell, on May 5, 1933, is on view. The deed of

constitution of said partnership Mario Mercado e Hijos, No. 36, executed in Ponce on June 13, 1916, before notary Antonio F. Castro, gave rise to record 29 of estate No. 1 triplicate, on the back of folio 41 of Volume 74 of Ponce and the deed of modification and extension of said partnership, No. 99, executed on June 11, 1926, before notary Jose Tous Soto, was had on view when entering record 35 of estate No. 1 quadruplicate, on folio 10 of Volume 241 of Ponce. The following appears from a certificate issued on May 10, 1933, by notary Fernando Zapater Martinez: That he deposited on the same day in the post office of Ponce, enclosed in an envelope with the proper postage, a copy of the deed of assignment and a copy of the notice of assignment, addressed to the mortgagor Dona Elvira Olivieri Commins at her residence in Mayaguez, Puerto Rico. It is further set down that the assignee Ana Rosa Tous y Gonzalez was represented at the execution thereof by her verbal agent Luz Belen Tous y Gonzalez. By virtue of which Dona Belen Gonzalez, widow of Tous, and her children Belen-Maria, Gladys, Jorge, Hector, Jose, Luz Belen, Ana Rosa, Celia and Alicia Tous y Gonzalez, record in their favor the aforesaid mortgage credit upon a 1/2 joint interest in this estate which they acquired by assignment, mention being made of the curable defect of the failure of the assignee, Ana Rosa Tous y Gonzalez, being legally represented at the execution. The foregoing appears from the registry and from the above instruments which were presented in this office at 8:45 A.M. of May 11, instant, as appears from the entry of presentation on folio 77 of Volume 164 of the Daybook. The notice of assignment is on file in the record of public and private instruments and marked 77. The foregoing agrees with the contents of the registry and papers filed, as witness my signature affixed in Ponce, on May 16, 1933. Fees $72.00, No. 5 of the Schedule of Fees.

(Sgd.) Miguel Planellas.

There is a notice on the margin which reads: 'The other estate is recorded on the back of folio 24 of Volume 16 of Guayanilla, estate No. 711, 12th record. Ponce, May 16, 1933. Planellas.' The mortgage that gave rise to the foregoing 14th record is fully cancelled by the 16th record following. Ponce, March 20, 1937. Planellas."

(b) The 12th record of estate No. 711 entered on the back of folio 24 of Volume 16 of Guayanilla, literally transcribed, reads as follows:

"12th. Rural. Estate described in the foregoing first record just as the same is described in the document presented in which this estate is mentioned by the name of 'Juanita'. There are no liens upon the mortgage credit the subject matter of this entry. The agricultural civil partnership Mario Mercado e Hijos, domiciled in Guayanilla, Puerto Rico, known as Mario Mercado e Hijos, acquired a mortgage credit upon a 1/2 undivided joint interest in this estate and in that referred to on the margin, amounting to $41,256.89 as principal, the value of four promissory notes, $11,100.00 for interest and $2,000.00 for costs, expenses, disbursements and attorney's fees in case of judicial recovery, said jointly owned interest in this estate being answerable for the sum of $12,379.08 as principal, $3,330.00 for interest and $600.00 for costs and other expenses, as appears from the 10th record, *supra*. By deed No. 33, executed in Ponce, on May 9, 1933, before notary Fernando Zapater Martinez, Mr. Mario Mercado y Montalvo, acting in his capacity as the only managing partner of the agricultural civil partnership known as Mario Mercado e Hijos, assigned, renounced and transferred in favor of Mrs. Belen Gonzalez, widow of Tous, of age, property owner, domiciled in Ponce and of her minor children, under the *patria potestas* of said widow and called Belen Maria, Gladys, Jorge and Hector Tous y Gonzalez, who are, respectively, 20, 19, 17 and 13 years of age, property owners,

domiciled in Ponce; in favor of Don Jose Tous Gonzalez, single, of age, property owner, residing at present in San Juan, Puerto Rico; in favor of Dona Luz Belen Tous Gonzalez, married to Don Vicente Usera, Jr., of age, property owner, domiciled in Ponce; in favor of Dona Ana Rosa Tous Gonzalez, married to Don Jose B. Carrion, domiciled in San Juan, of age, property owner; and in favor of Dona Celia and Alicia Tous Gonzalez, both of age, property owners, unmarried, domiciled in Ponce, said mortgage credit upon the said jointly owned interest in said estate and the one mentioned on the margin, the assignor subrogating the assignees to its rights in the same degree and priority, and delivering to them in the act of the execution of the aforesaid deed and in the presence of the notary and of the witnesses, the four mortgage promissory notes already mentioned, duly indorsed, attested to by the notary before whom the deed in question was executed, in which it is set down that the assignment of said mortgage deed is prorated as follows: There is assigned to Dona Belen Gonzalez, widow of Tous, the sum of $21,256.89, and the balance, that is, the sum of $20,000.00, in equal shares, to all her children, the other assignees mentioned above. The consideration for this assignment was the sum of $41,256.89, which Don Mario Mercado y Montalvo, in his capacity as manager of the partnership Mario Mercado e Hijos, received upon the execution of the deed herein referred to and in the presence of the attesting notary, who certified to the delivery, and of the witnesses, from the assignees, in a certified check on the National City Bank. Dona Belen Gonzalez, widow of Tous, who besides appearing at the execution of the deed in question in her own behalf, appeared also as mother with *patria potestas* over her minor children called Belen-Maria, Gladys, Jorge and Hector Tous y Gonzalez, and, moreover, as the guardian of Don Jose Tous Gonzalez, was duly authorized to appear at said assignment in her latter capacities by order of the

District Court of Ponce made by Judge D. Sepulveda on May 5, 1933, in civil case No. 7,850. It is further set down that the assignee Ana Rosa Tous y Gonzalez was represented at the execution thereof by her verbal agent Luz Belen Tous y Gonzalez. The above appears from the registry and from the aforesaid instruments mentioned at length in the 14th record of estate No. 534 triplicate, entered on folio 201 of Volume 33 of Guayanilla. By virtue of which Dona Belen Gonzalez, widow of Tous, and her children Belen-Maria, Gladys, Jorge, Hector, Jose, Luz Belen, Ana Rosa, Celia and Alicia Tous y Gonzalez, record in their favor the aforesaid mortgage credit upon a 1/2 joint interest in this estate which they acquired by assignment, mention being made of the curable defect of the failure of the assignee, Ana Rosa Tous y Gonzalez, being legally represented at the execution. Ponce, May 16, 1933. Fees $41.50, No. 5 of the Schedule of Fees.

(Sgd.) Planellas.

There is a notice on the margin reading as follows: 'The other estate is registered on folio 201 of Vol. 33 of Guayanilla, Estate No. 534 Duplicate, 14th record. Ponce, May 16, 1933. Planellas.'"

2. That the entries made by virtue of the copy of deed No. 47, executed on March 8, 1937, before notary Fernando Zapater Martinez, literally transcribed, are as follows:

(a) 16th record of Estate No. 534 Quadruplicate, on the back of folio 187 of Volume 36 of Guayanilla:

"16th. The mortgage that gave rise to the foregoing records 12 and 14, upon a 1/2 of this estate and another one, for the sum of $41,256.89, embodied in four promissory notes, enlarged to $11,100.00 for interest and $2,000.00 for costs and other disbursements, one of these estates being answerable for $28,877.81 as principal, $7,700.00 for interest

and $1,400.00 for costs and other expenses, is hereby fully cancelled, pursuant to the wish and consent of the creditors Dona Belen Gonzalez Salicrup, widow of Tous, in her own right and in representation of her minor son Hector Tous y Gonzalez, 17 years of age, single, property owner, domiciled in Ponce, and, moreover, as guardian of his other son, Jose Tous Gonzalez, incapacitated, duly authorized by order of the District Court of Ponce, made on March 5, 1937, by Judge D. Sepulveda in civil case No. 203, literally transcribed in the deed referred to by me, and pursuant further to the consent of the other creditors Dona Luz Belen, Dona Ana Rosa, Dona Alicia, Dona Celia, Dona Belen Maria and Don Jorge Tous Gonzalez, the first three named above with the express consent of their respective husbands Don Vicente Usera, Jr., Don Jose B. Carrion and Don Ignacio Maldonado, the latters also of age and present at the execution, inasmuch as the aforesaid creditors received the mount of the aforesaid mortgage credit in the following manner: Dona Belen Gonzalez Salicrup, widow of Tous, in her own behalf and with the conformity of other creditors, of age, a check for the sum of $37,812.43, on the Credito y Ahorro Ponceno, Yauco branch, made out by Mr. Francisco Lluberas; she also received, made out to the name of the clerk of the District Court of Ponce, a check upon the same bank, made out by the same person, for $4,444.46, covering the shares belonging to the minor Hector Tous Gonzalez and the incapacitated one, Jose Tous Gonzalez, in the aforesaid mortgage credit, which check Mrs. Gonzalez Salicrup deposited in the office of the clerk of the District Court of Ponce. Both items amount to the $41,256.89 as the principal of the aforesaid mortgage; all the said creditors acknowledging that the interest on said mortgage has been fully paid up to date. In the act of the execution of the deed to which I refer, Mrs. Belen Gonzalez Salicrup, widow of Tous, delivered to the attesting notary the four promissory notes representing the

principal of said mortgage to be rendered worthless and this was done by the notary across the face thereof, the following: 'This promissory note has been cancelled by virtue of a deed of cancellation of even date executed before me. Ponce, Puerto Rico, March 8, 1937. (Sgd.) F. Zapater, Notary Public.' This appears from the registry and from a copy of deed No. 47, executed in Ponce on March 8, 1937, before notary Fernando Zapater Martinez, presented in this office at 2:30 P.M., of March 10, instant, as evidenced by the entry on folio 31 of Volume 186 of the Daybook. And as the aforesaid conforms to the entry in the registry and the document presented, I sign this certificate in Ponce, March 20, 1937. Fees $48.00, No. 3 of the Schedule of Fees.

(Sgd.) Miguel Planellas."

(b) The note on the margin of the 12th record of estate No. 711 duplicate, on folio 1 of Volume 34 of Guayanilla, reads as follows:

"The mortgage that gave rise to the within record 12 upon a 1/2 interest in this estate and another one, is hereby fully cancelled pursuant to the wish and consent of the creditor Dona Belen Gonzalez Salicrup, widow of Tous, in her own right and in representation of her minor son Don Hector Tous Gonzalez, and, moreover, as guardian of her other son Don Jose Tous Gonzalez, incapacitated, and pursuant further to the consent of the other creditors Dona Luz Belen, Dona Ana Rosa, Dona Alicia, Dona Celia, Dona Belen Maria, Dona Gladys and Don Jorge Tous Gonzalez, the first three named, with the express consent of the husbands Don Vicente Usera, Jr., Don Jose B. Carrion and Don Ignacio Maldonado, inasmuch as the aforesaid mentioned creditors received the amount of the said mortgage credit in the following manner: Dona Belen Gonzalez Salicrup, widow of Tous, in her name and having first secured the consent of the other major creditors, a check for $36,812.43, upon the Credito y Ahorro

Ponceno, Yauco branch, made out by M. Francisco Lluberas; she also received another check made out to the name of the clerk of the District Court of Ponce, on the same bank, by the same party, for $4,444.46, representing the shares corresponding to the minor Hector Tous Gonzalez and to the incapacitated one, Jose Tous Gonzalez, in the aforesaid mortgage credit, which check was deposited by said Mrs. Gonzalez Salicrup in the office of the clerk of the District Court of Ponce, both such items making up the $41,256.89, as the principal of the aforesaid mortgage and it has been acknowledged by said creditors that the interest on the mortgage has been fully paid up to date. In the act of the execution of the deed referred to, Mrs. Belen Gonzalez Salicrup, widow of Tous, delivered to the attesting notary the four promissory notes representing the principal of said mortgage to be rendered worthless and this was done by said notary. This appears from the registry and from deed No. 47, executed in Ponce, on March 8, 1937, before notary Fernando Zapater Martinez, referred to at length in record 16 of the estate No. 534 quadruplicate, recorded on the back of folio 187 of Vol. 36 of Guayanilla. Ponce, March 20, 1937. Fees $10.00, No. 3 of the Schedule of Fees.

(Sgd.) Planellas."

3. That it does not appear from the records just transcribed, to which the aforesaid deeds gave rise, that the partnership Mario Mercado e Hijos, or anybody else, has reserved to itself the option to purchase and lease referred to in the record of the mortgage which has been assigned and cancelled.

4. That this certificate does not cover any other particulars because the interested parties has not so requested.

In witness whereof and at the request of Attorney Leopoldo Tormes, I issue the present certificate in Ponce, Puerto Rico, on this the 10th of November, 1939.

(Sgd.) MIGUEL PLANELLAS YANEZ,
Registrar of Property, Ponce, Puerto Rico.

(The following internal revenue stamps are affixed and cancelled on the back of this paper: 4 stamps of $1.00 each; 3 stamps of $0.50 each; one $0.25 stamp; a $0.10 stamp and another $0.05 stamp.)

(There has been duly stamped hereon the seal of the Registry of Property and underneath the following appears: "Cancelled 4 $1.00 stamps; 3 $0.50 stamps; a $0.25 stamp, a $0.10 stamp; a $0.05 stamp. No. 6 of the Schedule of Fees. Ponce, Puerto Rico, November 10, 1939. The Registrar: (Sgd.) Miguel Planellas.")

(There is a cover page with the following legend: "R-176. July 14, 1937, 2,000. Department of Justice of Puerto Rico. Registry of Property, Ponce, P.R.—Certificate concerning properties Nos. 711 and 534 recorded on folios 24 back and 201 of Volumes 16 and 33 of Guayanilla.

"This copy was issued on November 10, 1939 at the request of Attorney Leopoldo Tormes Garcia." (The seal of the Registry of Property is stamped hereon.)

I, Justo M. Bodon, court stenographer of the District Court for the Judicial District of Ponce, Puerto Rico, do hereby certify:

That the foregoing is a true and faithful transcription of the documentary evidence submitted by both sides in cases Nos. 311 and 312, entitled Mario Mercado e Hijos *v.* Elvira Olivieri Commins et als., and Mario Mercado e Hijos *v.* Elvira Olivieri Commins and Emilio Blasini Totti, *In re:* Rescission of Contract of Sale and other particulars, and Rescission of Lease and other particulars, respectively.

And for the purpose of the appeals taken to the Supreme Court of Puerto Rico from the judgments entered in said cases, I issue this certificate in Ponce, Puerto Rico, on this the 10th of December, 1941.

JUSTO M. BODON,
Court Stenographer of the District Court of Ponce.

Received February 19, 1942, 11:50 A.M. Supreme Court of Puerto Rico.

IN THE DISTRICT COURT FOR THE JUDICIAL DISTRICT OF PONCE, P. R.

Civil No. 311.

Mario Mercado e Hijos, Plaintiff,

v.

Elvira Olivieri Commins, et als., Defendants.

In re: Rescission of Contract of Sale and other particulars.

Civil No. 312.

Mario Mercado e Hijos, Plaintiff,

v.

Elvira Olivieri Commins, et als., Defendants.

In re: Rescission of Lease and other particulars.

APPROVAL OF THE TRANSCRIPT OF THE EVIDENCE.

I, Domingo Sepulveda, retired judge of the District Court for the Judicial District of Ponce, Puerto Rico, do hereby certify:

That I am the judge who presided the trial of the above entitled cases, which, upon stipulation by the parties, approved by the court, were submitted upon the same transcript of the evidence; that I am the judge who entered the judgments in the same; that the foregoing transcript of evidence, which contains all the amendments suggested and admitted by the court, is a true and faithful transcription and contains the whole evidence heard, as well as the acts, statements and orders of the court, and incidents of the trial, and the objections and exceptions taken by counsel on both sides.

And in order that the same become part of the judgment roll for the purpose of the appeals taken from the judgments, I approve, sign and certify said transcript in Ponce, Puerto Rico, on the 9th of February, 1942.

D. SEPULVEDA,
District Judge, retired.

On February 19, 1942, I served notice on F. Ochoteco, P. M. Porrata, L. Lopez de V., L. Tormes and J. Sabater of the filing of the present case on February 19, 1942.

JOAQUIN LOPEZ,
Secretary-Reporter, Supreme Court of P.R.
Per: F.V.

IN THE SUPREME COURT OF PUERTO RICO.

8501.

Mario Mercado e Hijos, Plaintiff and Appellant,

v.

Elvira Olivieri Commins et al., Defendants and Appellees.

Rescission of Sale and other particulars.

8502.

Mario Mercado e Hijos, Plaintiff and Appellant,

v.

Elvira Olivieri Commins and Emilio Blasini Totti, Defendants and Appellees.

Rescission of Lease and other particulars.

Appeals from the District Court of Ponce.

OPINION OF THE COURT

DELIVERED BY MR. CHIEF JUSTICE DEL TORO.

San Juan, Puerto Rico, July 31, 1942.

The fundamental questions involved in these appeals are the same. It is therein sought to determine the scope of a certain contractual clause and its application in connection with other contracts entered into, namely, one of sale and one of lease, in accordance with the facts and the law.

Such questions have been three times submitted to this court, the first time in an action of ejectment, the second time in motions to dismiss on the ground of frivolity, of the appeals taken from judgments which settled the same in a certain way rendered in

ordinary actions, and the third time in deciding the same appeals on their merits.

In our judgment in the ejectment proceedings we stated that ejectment was not the proper remedy for disposing of them and affirmed the judgment appealed from. Lluberas *v.* Mario Mercado e Hijos, 55 P.R.R. 39. In our decision of the motion to dismiss we held that they were not plainly frivolous. We must finally determine them here, thus putting an end to the litigation.

The actions were commenced in the District Court of Ponce, by Mario Mercado e Hijos on the same day—April 7, 1937—that for the rescission of sale against Elvira Olivieri, Manuel Francisco Lluberas and others, and that for the rescission of lease against the same Elvira Olivieri and Emilio Blasini. We decided them in judgments dated October 6, 1941 in a single opinion.

In seeking the rescission of the contract of sale entered into between defendant Mrs. Olivieri and the Lluberas people, and its subrogation to the latter's rights, it was substantially alleged in the complaint by the plaintiff that Mrs. Elvira Olivieri executed four promissory notes to holder negotiable by indorsement, secured by a mortgage upon her undivided joint half interests in the estates Juanita and Indios bounded by land belonging to the plaintiff in the municipal district of Guayanilla.

That in the same deed in which was embodied the mortgage to secure the promissory notes, Mrs. Elvira Olivieri acknowledged to be indebted to plaintiff Mario Mercado e Hijos in the sum of $41,256.89 and the latter agreed to accept the notes in payment of the aforesaid indebtedness. That it was further agreed, as part consideration of the contract that Elvira Olivieri bound herself to grant the plaintiff priority for the sale and lease of her condominiums on the same price and conditions so long as the mortgage was in force, and that in case of a sale in violation of such agreement, the plaintiff became empowered to exercise an action of redemption and that it was also agreed in said deed that the actual division of her joint interests in the estates Juanita and Indios could not be effected without the consent of the part-

nership Mario Mercado e Hijos as long as the promissory notes were not cancelled.

It is further alleged that plaintiff assigned the total of the mortgage notes to the Heirs of Jose Tous Soto and that when making the said assignment it was agreed with the aforesaid heirs that the plaintiff partnership would reserve to itself—as it did reserve—the right of option and redemption referred to.

That the assignment of the mortgage notes was effected on May 9, 1933, and on August 21, 1936, defendant Mrs. Elvira Olivieri and her sister Santia carried out the actual division of their jointly owned interests on the mortgaged properties, and that pursuant to the deed of mortgage, the partnership Mario Mercado e Hijos appeared in order to consent to the said division.

The preliminary facts being thus established, it is further alleged in the complaint that said defendants conspired among themselves with the deliberate purpose of defrauding the plaintiff and while the option clause which is transcribed in full was still effective they sold the properties adjudicated to Mrs. Elvira Olivieri in payment of her condominiums, without notifying the plaintiff as to any proposals to buy it, all the defendants being aware of the right of option held by plaintiff Mario Mercado e Hijos regarding the said estates at the time of the execution of said sale.

The plaintiff then alleges its willingness to redeem the property of the defendants who acquired as the result of the alleged conspiracy and declares itself ready to satisfy the same amount paid by the purchasers and in order to show its good faith, encloses with its complaint and makes part thereof another action to deposit money in court filed in the office of the clerk of the court which action was filed after having requested of all the defendants to convey to it the title to the properties sold.

Defendant Mrs. Elvira Olivieri Commins filed a separate answer and the other defendants filed theirs jointly.

In the said answers the defendants admitted all the allegations contained in paragraphs 1, 2, 3, 4, 5, 7, 9 and 10 of the com-

plaint, denied the remaining paragraphs and by way of special defense they pleaded as follows:

(a). That clause 7 of deed No. 13 of March 23, 1932, imposed by plaintiff upon defendant Olivieri Commins while the latter was indebted to plaintiff; that at the time the said option to purchase and lease was inserted under pressure in the said deed of mortgage, the plaintiff was not a debtor but a creditor concerning said immovables; that the plaintiff could not adjudicate to itself the estates of the defendant in case of nonperformance of the contract secured by mortgage nor could it prevent the defendant from alienating or freely disposing of such estates, and that the option clause to purchase or redeem was extinguished by the fact of the payment in full by defendant Elvira Olivieri of the aforesaid mortgage credit, the plaintiff thus forfeiting the right to redemption by its assignment of the mortgage credit to the Heirs of Jose Tous Soto, such right of redemption therefore having prescribed by reason of the lapse of more than four years from the time of its creation (Sections 1397 and 1078 of the Civil Code).

(b). That said clause 7 is moreover void because the same amounts to an agreement whereby the mortgagee is empowered to adjudicate to itself the mortgagor's property upon nonperformance of the contract secured by mortgage (Sections 2 and 4 of Act No. 47 of April 13, 1916, to repress usury).

(c). Because the same amounts to an agreement whereby the mortgagor is forbidden to alienate or freely dispose of her property. (Subdivision 4 of Article 107 of the Mortgage Law; *Van Syckel* v. *The Registrar of Property*, 3 P.R.R. 9 and *Clausells* v. *Registrar of Property*, 20 P.R.R. 298.)

(d). Because the same conflicts with Section 1412 of the Civil Code.

(e). Because it seeks to create a right that cannot be created, that is, a right of redemption to be exercised by someone who was not the vendor of the property but a mortgagee.

(f). Because, should such right of redemption be valid, the plaintiff failed to comply with the legal provisions as regard the

tender of payment, inasmuch as the tender made by it was made separately, that is, within another proceeding, that is, in civil case No. 310 of this court, instead of doing so within the above entitled case.

In the complaint, *In re:* Rescission of Lease, the same allegations are substantially made with the only alteration of the allegation made in paragraph 11 that Mrs. Elvira Olivieri, prior to March 8, 1937, in conspiracy with the other defendant Emilio Blasini Totti leased to the latter the rural estate known as Juanita, which is described.

The defendants answered the complaint separately, admitting certain facts therein alleged and denying the others, and alleging also the same defenses pleaded by the defendants in the case for rescission of sale.

After a trial in the district court of the case *In re:* Rescission of Sale, upon documentary and oral evidence, the parties made a stipulation to submit the case *In re:* Rescission of Lease on the same evidence as that as Rescission of Sale, and then filed their briefs in both cases. The court took both cases under advisement and as the outcome of the admissions made by the defendants in their answers and of the evidence introduced by both sides and considered as a whole, the court made the following findings of fact:

"By public deed No. 13 of March 23, 1932, executed before notary Fernando Zapater Martinez, defendant Elvira Olivieri Commins secured by a mortgage upon her condominiums in the estates Juanita and Indios, four promissory notes negotiable by indorsement which she executed, and at the same time she acknowledged to owe to plaintiff Mario Mercado e Hijos the sum of $41,256.89, and the latter partnership agreed to accept said promissory notes in payment of the amount owed.

"Said mortgage deed contained, among others, the following clause:

" 'Seventh: Option to Purchase and Sell and to Lease—

Notwithstanding the foregoing clause the debtor, as part of the consideration of this contract, agrees with the partnership Mario Mercado e Hijos, so long as the mortgage credit herein constituted is not paid, to grant it priority to purchase and sell or lease her undivided joint interests in the estates Indios and Juanita upon the same price and terms. To this effect, the debtor shall advise, unless such mortgage credit is paid, by registered letter to Mario Mercado e Hijos, of any offer of sale or lease made to her and said partnership shall be granted thirty days for accepting or refusing such offer and during said period the debtor cannot sell or lease to anybody else. Should there be a sale or lease in violation of this agreement, Mario Mercado e Hijos shall be entitled to repurchase from the purchaser or lessee, which right it can exercise for thirty days from the record of such sale or lease for subrogating itself to the place, degree or priority of the purchaser or lessee."

"By a public deed No. 33 of May 9, 1933, executed before notary Fernando Zapater Martinez of Ponce, the partnership Mario Mercado e Hijos conveyed to the Heirs of Jose Tous Soto the said mortgage credit, by means of the proper indorsement and delivery by said partnership Mario Mercado e Hijos to the Heirs of Tous Soto of the four mortgage notes already referred to. It does not appear from this deed of conveyance of credit that the partnership Mario Mercado e Hijos reserved to itself the rights of option to sell and lease specified in clause 7 of deed No. 13 of March 23, 1932, which clause 7 is hereinbefore transcribed in this opinion. Nor does it appear either proven that such reservation of rights was made in the registry of property on the record corresponding to the conveyance of the mortgage credit.

"Obligor Elvira Commins was advised of the conveyance of the credit by means of an uncertified copy of the deed of conveyance.

"By deed No. 30 of February 25, 1937, executed before

notary Luis Lopez de Victoria, Elvira Olivieri Commins mortgaged the aforesaid estates Juanita and Indios for $45,000.00 to defendant Manuel Francisco Lluberas Passarell, of which sum the latter retained the amount of $41,000.00 to satisfy the mortgage credit constituted in favor of Mario Mercado e Hijos and conveyed to the Heirs of Jose Tous Soto.

"By deed No. 47 of March 8, 1937, executed before notary Fernando Zapater, having first obtained the proper judicial authorization, the Heirs of Jose Tous Soto cancelled the mortgage credit against Mrs. Elvira Olivieri Commins, which credit had been conveyed to said heirs by plaintiff Mario Mercado e Hijos.

"By deed No. 40 of March 9, 1937, executed before notary Luis Lopez de Victoria, defendant Elvira Olivieri Commins sold for $40,000.00 the estate Indios to the other defendant Manuel Francisco Lluberas Passarell.

"By another deed, that is, deed No. 41 of even date, March 9, 1937, and executed before the same notary Lopez de Victoria, Elvira Olivieri Commins leased to the other defendant Emilio Blasini Totti the rural estate known as Juanita.

"By deed No. 72, executed in Ponce before notary Fernando Zapater on March 31, 1937, (that is, subsequent to the cancellation of the mortgage by the Heirs of Jose Tous Soto), it was set forth by said heirs that 'the conveyance made by the partnership Mario Mercado e Hijos to said heirs did not include the right or rights set out in favor of Mario Mercado e Hijos in clause 7, *In re:* "Option to Sell and Lease" contained in mortgage deed No. 13 of March 23, 1932, (Exhibit J of plaintiff); Mario Mercado e Hijos reserving to itself the rights and obligations mentioned in said clause during the whole time of the life of the mortgage.'

"Deed No. 72, *supra*, was approved by this District Court of Ponce, according to judgment rendered on April 7, 1937,

in civil case No. 299 of this court (Exhibit E of the plaintiff).

"By deed No. 7 of April 7, 1937, executed before notary Pedro M. Porrata, Elvira Olivieri Commins was summoned to receive a certain sum of money pursuant to said clause 7 regarding option to sell and lease but Elvira Olivieri Commins refusing to accept the money. Thereupon the partnership Mario Mercado e Hijos, on April 8, 1937, deposited in the office of the clerk of this district court in case No. 310, *In re:* Deposit of Money in Court, the sum of $45,359.50, as per receipt No. 702 of the clerk (Exhibit H of plaintiff).

"The plaintiff then, on April 8, 1937, filed the complaints in cases Nos. 311 and 312, *In re:* Rescission of Sale and Rescission of Lease, respectively.

"It has also been shown that according to deed No. 73 of August 20, 1936, (while the mortgage credit conveyed to the Heirs of Jose Tous Soto was still in force), the partnership Mario Mercado e Hijos intervened in said deed No. 73, *In re:* Actual Division of Rural Estate and other particulars, which deed was executed before notary Tomas Paz Ruiz (Exhibit A of plaintiff) and gave its consent for said partition of property held in common.

"It has also been shown that neither Elvira Olivieri Commins nor any of the defendants, nor anybody else in their behalf, advised in any way to plaintiff herein Mario Mercado e Hijos, prior to the time when they were agreed upon, the lease and sale of the estates Juanita and Indios, nor at any time afterwards, Mario Mercado e Hijos becoming aware of such deals on March 10, 1937. And that the said partnership always was and is now ready to subrogate itself to the place of the purchasers and lessees of said estates for the same price and rentals and on the same terms as those of the contract of sale and lease whose rescission is hereby sought.

"It also appears to have been shown that both Elvira Olivieri Commins and all the other defendants in cases Nos.

311 and 312 were advised, prior to the execution of the contract of sale and lease, of the right of option to purchase and lease held by Mario Mercado e Hijos concerning the estates Juanita and Indios.

"From the testimony of Elvira Olivieri Commins (page 81 of the Transc. of Rec.) it appears as a fact that she authorized her son-in-law Rafael Barletta to enter into negotiations with Mario Mercado e Hijos for the lease or sale of the estates Juanita and Indios.

"From the testimony of Jose R. Peralta, manager of the plaintiff partnership, (page 126 *et seq.* of the Transcript of Record) and from certain telegrams and letters mentioned in such testimony and which were admitted in evidence, it appears as a fact that from December, 1936, until May 8, 1937, Rafael Barletta and the partnership Mario Mercado e Hijos held conversations and meetings in regard to the possible purchase and lease of the said immovables from Elvira Olivieri Commins to the plaintiff partnership."

Having made the foregoing findings of fact, the court proceeded to determine the questions of law as follows:

"Counsel for both sides raised and discussed seven questions of law in their respective briefs.

"We have studied and considered them all, but in our judgment the most important of them for the determination of the present cases, are as follows:

" '1. Whether or not the plaintiff showed conspiracy and fraud on the part of the defendants for the purpose of cheating the said plaintiff of its rights in connection with said clause 7 of option to sell and lease.

" '2. Whether or not clause 7 of said deed regarding the option to sell and lease binding the said mortgagor in favor of the said partnership became extinguished by virtue of the payment of the mortgage executed by Mrs. Elvira

Olivieri Commins in favor of Mario Mercado e Hijos (Exhibit J of the plaintiff).

"'3. Whether by virtue of the conveyance from Mario Mercado e Hijos to the Heirs of Jose Tous Soto of the mortgage credit referred to in Exhibit J of the plaintiff, the rights set forth in said clause 7 of option to sell and lease were likewise conveyed.'

"For a logical consideration of the above legal questions we will invert the order of their presentation and we will begin with question No. 3.

"Article 152 of the Mortgage Law reads as follows:

"'A mortgage credit may be conveyed or assigned to a third person in whole or in part, provided it be effected by means of a public instrument, notice of which is given to the debtor, and that it be recorded in the registry.

"'The debtor shall not be bound by said contract to any further extent than he was by his own.

"'The assignee *shall be subrogated to all the rights of the assignor.*' (Italics ours.)

"The terms stipulated in the deed of conveyance of the mortgage credit are very explicit and do not leave any room for doubt as to the intention of the contracting parties, therefore the literal sense of its stipulations shall be observed (section 1233 of the Civil Code, 1930 ed.) and there should not be understood as included in said contract things and cases different from those with regard to which the persons interested intended to contract (section 1235 of the same statute). (*Sweet* v. *Zalduondo*, 26 P.R.R. 307; *Loiza Sugar Co.* v. *Hernaiz*, 35 P.R.R. 474; section 26 of the Law of Evidence.)

"According to section 1759 of the Civil Code, the mortgage is essentially indivisible. The option to sell and lease was substantially part of said contract and, therefore, it was inseparable from the mortgage. (*Llinas* v. *Mariani*, 47 P.R.R.

543; *Montilla* v. *Van Syckel et al.*, 8 P.R.R. 153; *Puente* v. *Perez et al.*, 7 P.R.R. 181).

"Section 1418 of the Civil Code reads as follows:

" 'The sale or assignment of a credit includes that of *all the accessory rights,* such as the security, mortgage, pledge, or *privilege.*' (1930 ed.) (Italics ours.)

"In his Commentaries on the Civil Code, Vol. 10, pages 402–409, and commenting upon sections 1418 *et seq.* of said Code (1930 ed.), Manresa, among other things, expresses himself as follows:

" 'Now well: where nothing is stated, it is logical to presume, as the law presumes, *that the assignment of a principal right includes also the accessory right, which becomes a sort of supplement.*' (Italics ours.)

" 'Where we do agree is that in the case of assignment of a credit subject to a resultory condition, whose fulfillment depends upon the will of the creditor, the latter cannot, after such credit is assigned, to enforce the fulfillment of such condition. On the one hand, because in agreeing upon the assignment he was a creditor no longer. And on the other hand, because the assignment presupposes the waiver of his right which becomes incompatible with such waiver.'

"When Mario Mercado e Hijos conveyed to the Heirs of Tous Soto the said mortgage credit it made a special stipulation in regard to the interests on the credit, but it failed to make any reservation in regard to the clause of option to sell and lease. Nor was said clause mentioned by the Heirs of Tous Soto when it applied to this court for leave to become the assignee of the credit, nor either when leave was sought for the cancellation of said credit by said heirs.

"Neither deed No. 72 of May 31, 1937, executed before notary Zapater, regarding ratification of mortgage credit by the Heirs of Tous Soto (Exhibit 'F' of the plaintiff) nor

the proceedings No. 299, before this court regarding the approval of said deed, has any weight in the present cases, because said deed No. 72 was executed after the total cancellation of the mortgage credit by the Heirs of Tous Soto.

"For the foregoing reasons, we come to the conclusion that 'when Mario Mercado e Hijos conveyed to the Heirs of Tous Soto the mortgage credit, it also conveyed the rights embodied in clause 7 of option to sell and lease'.

"Question of law No. 2, after the above statements when considering question No. 3, is decided by us affirmatively, as we come to the conclusion that 'clause 7 of deed No. 13 of March 23, 1932', (Exhibit 'J' of the plaintiff) in regard to option to sell and lease become extinguished by virtue of the payment of the mortgage constituted by Elvira Olivieri Commins in favor of Mario Mercado e Hijos (section 1110 of the Civil Code, 1930 ed.).

"We will now pass upon the questions raised in No. 1, that is, 'whether or not the plaintiff showed conspiracy and fraud on the part of the defendants for the purpose of cheating the said plaintiff of its rights in connection with said clause 7 of option to sell and lease'.

"The court having reached the two conclusions previously stated when affirmatively deciding the questions of law raised in Nos. 3 and 2, it necessarily has to reach the conclusion that Mario Mercado e Hijos, when bringing these actions on April 8, 1937, had neither right to nor interest in the mortgage that had been constituted in its favor by Elvira Olivieri Commins which Mario Mercado e Hijos had conveyed to the Heirs of Jose Tous Soto.

" . . .

" 'Fraud must be proved by incontestable facts, or at least by a preponderance of evidence, for it can not be established by presumption, conjecture or suspicion.' (*Gomez* v. *Bravo et al.*, 34 P.R.R. 141; *Arruza* v. *Laugier*, 14 P.R.R. 24.)

"'Every presumption being against fraud, and something more than a mere conjecture being necessary to establish its existence, it must be shown by means of clear, strong and convincing evidence.' *Ortiz* v. *Clausells et al.*, 34 P.R.R. 509.

"'A judge should not be impressed by a charge of fraud to the extent of exalting the importance of every fact on which suspicion may be raised of its having been committed and disdaining more logical deductions compatible with good faith.' *Sabalier* v. *Iglesias et al.*, 34 P.R.R. 338.

"The court comes to the conclusion that neither conspiracy nor fraud on the part of the defendants against the plaintiffs in these cases has been shown.

"Having reached the foregoing conclusions, the court deems it unnecessary to consider the other questions of law raised and discussed in the present cases by counsel for both sides."

The judgments were registered accordingly and in both cases the plaintiff appealed therefrom to this court. Several briefs were filed and two hearings have been held in which the questions involved were discussed from every imaginable angle. In our opinion the findings of fact of the trial court still stand and its conclusions of law shall not be disturbed.

In a supplementary brief filed by the appellant, the following citation is made:

"The recording of the instrument granting the option as required by law is, of course, constructive notice of the option to a subsequent purchaser. *Chesbrough* v. *Vizard Invest. Co.*, (1913), 156 Ky. 149, 160 S.W. 725; *Kinberger* v. *Doruet* (1921), 149 La. 986, 90 So. 367; *Guerin* v. *Sunburst Oil & Gas Co.*, (1923), 68 Mont. 365, 218 Pac. 949. In case last cited the court said:

"'Since the option was an instrument entitled to be recorded, and was recorded as prescribed by law, it imparted

constructive notice of its contents to Mrs. Guerin, who was a subsequent purchaser of the property affected by the option, from the time it was filed with the county clerk of Toole county on December 9, 1921, Section 6934, above. One who purchases land from the owner after the recording of an option given by the owner to another person to purchase the same land takes with constructive notice of the option, and cannot claim to be an innocent purchaser.'"

If the plaintiff when assigning its promissory notes to the Heirs of Tous Soto had expressly reserved to itself the right of option and if when recording the assignment it had recorded such reservation in the registry, then it would have been entitled to claim knowledge of such reservation on the part of defendants with all the consequences that might arise as against them. The record of the original contract in the registry and that of the second contract without any reservation in regard to option, entitled the defendants to proceed as regards the plaintiff in accordance with their construction of the statute. And we have already seen that according to the statute the assignment without reservation of the mortgage notes carried with that of the option. Therefore, if the defendants resolved to assume any risk towards the plaintiff when acting in the way they did, such risk entirely disappeared when the legal precept applicable thereto was established.

The appeals must be dismissed and the judgments appealed from affirmed.

EMILIO DEL TORO,
Chief Justice.

It is a faithful copy.

I attest: JOAQUIN LOPEZ CRUZ, *Secretary Reporter.*

[Same Title.]

JUDGMENT.

San Juan, Puerto Rico, July 31, 1942.

For the reasons stated in the foregoing opinion, the judgment rendered by the District Court of Ponce on October 6, 1941, in the above entitled case is hereby affirmed.

It was so decreed, as witness the signature of the Chief Justice.

EMILIO DEL TORO,
Chief Justice.

I attest: JOAQUIN LOPEZ, *Secretary Reporter.*

It is a faithful copy

I attest: JOAQUIN LOPEZ CRUZ, *Secretary Reporter.*

On August 1, 1942, notice of this judgment and of the opinion on which it is based was served on Porrata, Tormes and Sabater by sending them copies thereof.

JOAQUIN LOPEZ,
Secretary Reporter,
Per J.C.

Received: August 11, 1942, 10:52 A.M., Supreme Court of Puerto Rico.

[Same title.]

MOTION TO RECONSIDER JUDGMENTS.

To the Honorable Court:

Now come the defendants Lluberas Pasarell and Emilio Blasini Totti through their undersigned counsel and pray this court to reconsider its judgments rendered on July 31, 1942, in the sense of imposing the costs and a substantial amount as fees for counsel for these defendants and appellees and in support thereof they state as follows:

1. That in rendering its judgments in the present case the District Court of Ponce correctly applied the law to the facts in the

present cases, it being expressly held by the District Court of Ponce that plaintiff was not sufficiently interested in order to be entitled to bring the present suits because it had entirely disposed of any right to or interest in said notes and the mortgage securing the same, which contained the clause of option to sell and lease (Exhibit 3 of defendant Olivieri, Transcript documentary evidence, pp. 412–425), which it had assigned to the Heirs of Jose Tous Soto, ever since May 9, 1933, (Exhibit F of plaintiff, Transcript documentary evidence, pp. 286–302).

2. That in rendering its judgments in the present cases, the District Court of Ponce found plaintiff Mario Mercado e Hijos to be obstinate and imposed against it the costs, expenses, disbursements, in the sum of two thousand dollars ($2,000) as attorney's fees in case No. 8501, *In Re:* Rescission of Sale, and four hundred dollars ($400) as attorney's fees in case No. 8502, *In Re:* Rescission of Lease.

3. That in affirming the judgments in the present cases this Honorable Court agreed with the theory set forth by the District Court of Ponce in its opinion and statement of the case which were made part of the judgments rendered therein.

4. That from whatever angle the legal situation may be viewed, plaintiff Mario Mercado e Hijos was not entitled to prosecute these suits, and its appeals from the judgments rendered by the District Court of Ponce in these cases turned out to be frivolous, and for that reason it was proper to tax against it the costs on appeal and a substantial amount as fees for the undersigned attorneys of defendants and appellees, who have had to work hard to clear up a situation sought to be confused in its brief by plaintiff and appellant which appears to be an obstinate litigant and against which the law should be rigorously applied.

For the above reasons we pray this Honorable Court to modify its judgments in the present cases so as to include therein the costs on appeal and a substantial amount as attorney's fees to be taxed against the plaintiff and appellant.

In Ponce to be filed in San Juan, Puerto Rico, on August 10, 1942.

LUIS LOPEZ DE VICTORIA *and*
LEOPOLDO TORMES,
Counsel for Defendants and Appellees
LLUBERAS PASARELL *and* EMILIO BLASINI TOTTI,
Per LEOPOLDO TORMES,
One of the Attorneys.

IN THE SUPREME COURT OF PUERTO RICO.

Civ. 8501.

Mario Mercado e Hijos, Plaintiff-Appellant,

v.

Elvira Olivieri Commins, Manuel Francisco Lluberas Pasarell and his wife Hazell Kelly Lluberas Pasarell, Antonia Lluberas Pasarell, Rosa Elena Lluberas Pasarell, Graciela Lluberas Pasarell and her husband Antonio Valentin Maestre, Celia Lluberas Pasarell and her husband Emilio Blasini Totti, Raquel Lluberas Pasarell, Defendants-Appellees.

In re: Rescission of Sale and other Particulars.

Appeal from the District Court of Ponce.

NOTICE OF APPEAL TO THE UNITED STATES CIRCUIT COURT OF APPEALS.

[Received August 17, 1942, 3:15 P.M.]

Notice is hereby given that Mario Mercado e Hijos, plaintiff and appellant herein, appeals hereby to the United States Circuit Court of Appeals for the First Circuit from the final judgment rendered and entered by the Supreme Court of Puerto Rico in the above entitled case on July 31, 1942, whereby the judgment rendered in this suit by the District Court of Ponce, Puerto Rico, was affirmed.

The appellees to the appeal herein taken are those specified in the caption hereof.

Bond for costs in the appeal now prosecuted is filed with this notice.

San Juan, Puerto Rico, August 17, 1942.

PEDRO M. PORRATA,
Ponce, Puerto Rico,
by ISMAEL SOLDEVILA,
San Juan, P. R.,
Attorneys for Appellant.

[MEMORANDUM: Costs bond in the sum of $250, Glen Falls Indemnity Company, surety, filed August 17, 1942; petition for fixing the amount of supersedeas bond, filed August 17, 1942; order fixing the amount of supersedeas bond at $1000, entered August 24, 1942; and supersedeas bond in the sum of $1000, Great American Indemnity Company, surety, filed August 26, 1942, are here omitted. A. I. CHARRON, *Clerk*.]

Received October 1, 1942, 11:07 A.M. Supreme Court of Puerto Rico.

[Same title.]

DESIGNATION OF RECORD ON APPEAL TO UNITED STATES CIRCUIT COURT.

Now comes Mario Mercado e Hijos, appellant herein, by its undersigned attorneys Pedro M. Porrata and Ismael Soldevila, and hereby gives notice of the following:

That the appellant herein took its appeal on August 17, 1942, from judgment rendered and entered in this case by the Supreme Court of Puerto Rico on July 31, 1942, to the United States Circuit Court of Appeals for the First Circuit.

That said appellant promptly instructed the clerk or secretary reporter of the Supreme Court of Puerto Rico, and hereby again

does instruct him, as to the contents of the record on said appeal taken to the United States Circuit Court of Appeals for the First Circuit.

That the aforementioned record on appeal shall contain the complete record of the case and all the proceedings and evidence taken in the action.

San Juan, Puerto Rico, September 30, 1942.

PEDRO M. PORRATA *and*
ISMAEL SOLDEVILA,
by ISMAEL SOLDEVILA,
Attorneys for the Appellant.

CERTIFICATE OF MAILING OF COPIES.

Ismael Soldevila, attorney for the appellant, Mario Mercado e Hijos, hereby certifies:

That on October 1, 1942, he has sent by mail a copy of the foregoing to each one of the attorneys for the appellees herein, that is, to Luis Lopez de Victoria, Leopoldo Tormes, Jose S. Sabater and Jose Oliver Sabater, Esquires, to their respective known addresses at Yauco, Ponce and Mayaguez, Puerto Rico; that each one of those copies was enclosed in a sealed envelope with sufficient postage and clear address and each one of said envelopes having been deposited or placed in the mails at the post office in the city of San Juan, Puerto Rico; that between this city and each one of the cities of Yauco, Ponce and Mayaguez, there is a regular daily communication by mail, maintained by the United States Post Office Department.

San Juan, Puerto Rico, October 1, 1942.

ISMAEL SOLDEVILA,
Attorney for Appellant.

[Same title.]

ORDER.

[By the Court, on motion of Mr. Chief Justice del Toro.]

San Juan, Puerto Rico, November 3, 1942.

The motion for reconsideration of the judgments rendered in the above entitled cases filed by the defendants Lluberas and Blasini to the effect that the plaintiff should be adjudged to pay the costs on appeal and a substantial amount for the payment of attorney's fees on the ground that the appeals are frivolous, is hereby denied.

It was so ordered by the court as witness the signature of the Chief Justice.

EMILIO DEL TORO,
Chief Justice.

I attest: JOAQUIN LOPEZ, *Secretary Reporter.*

It is a faithful copy.

I attest: JOAQUIN LOPEZ CRUZ, *Secretary Reporter.*

Received November 2, 1942. 9:22 A.M. Supreme Court of Puerto Rico.

Office of the Clerk

UNITED STATES CIRCUIT COURT OF APPEALS
FOR THE FIRST CIRCUIT

Arthur I. Charron Clerk

1602 P. O. & U. S. Courthouse Boston, Massachusetts.

October 29, 1942.

Your Nos. 8501 and 8502,

Matio Mercado e Hijos *v.* Elvira Olivieri Commins et al.

Secretary-Reporter of the Supreme Court of Puerto Rico, San Juan, Puerto Rico.

Dear Sir:

Upon motion of appellant in the two above-entitled cases, this

court today entered orders of enlargement of time within which to file the transcripts of record and docket these cases to, and including, December 31, 1942.

Respectfully,

ARTHUR I. CHARRON,
Clerk.

[MEMORANDUM: Orders of enlargement of time for docketing case to April 1, 1943, are here omitted. A. I. CHARRON, *Clerk.*]

IN THE SUPREME COURT OF PUERTO RICO.

8501.

Mario Mercado e Hijos, Plaintiff and Appellant,

v.

Elvira Olivieri Commins et al., Defendants and Appellees.

Rescission of Lease and other particulars.

Appeal from the District Court of Ponce.

CERTIFICATE OF TRANSLATION.

I, Luis Jordan, translator of the Supreme Court of Puerto Rico, do hereby certify:

That the foregoing is a true and faithful translation of the record, on appeal to the United States Circuit Court of Appeals for the First Circuit, in the case of Mario Mercado e Hijos, plaintiff and appellant, *v.* Elvira Olivieri Commins et al., defendants and appellees, Civil No. 8501.

San Juan, Puerto Rico, this twenty-fourth day of December, 1942.

LUIS JORDAN,
Translator of the Supreme Court of Puerto Rico.

[Same Title.]

CLERK'S CERTIFICATE.

I, Joaquin Lopez, Secretary-Reporter of the Supreme Court of Puerto Rico, do hereby certify:

That the foregoing papers and proceedings had in the above-entitled case are true and faithful copies of their respective originals as the same appear on file and of record in this office;

I further certify that the translation of said papers and proceedings has been revised by the translator of this court, as shown by his certificate attached and made a part of this transcript.

In testimony whereof, I have hereunto set my hand and affixed the seal of this court, in the city of San Juan, Puerto Rico, this eighteenth day of February, 1943.

JOAQUIN LOPEZ.

[$204.28 internal revenue stamps cancelled.]

PROCEEDINGS IN CIRCUIT COURT OF APPEALS.

STATEMENT OF POINTS.

[Filed in Circuit Court of Appeals March 26, 1943.]

Now comes plaintiff-appellant, partnership Mario Mercado e Hijos, a partnership duly organized by and under the laws of Puerto Rico, and files the following assignment of error or "points on appeal" upon which it relies in the prosecution of the appeal herewith petitioned for in this case, from the judgment of the Supreme Court of Puerto Rico entered on the thirty-first day of July, 1942.

1. The Supreme Court of Puerto Rico erred in affirming the judgment of the District Court for the Judicial District of Ponce, Puerto Rico, rendered October 6, 1941.

2. The Supreme Court of Puerto Rico committed a plain error of law in not declaring that the proceedings in ex-parte, Civil No. 299 over ratification of covenant, in which Sucesion Tous Soto solemnly recognizes that the option belongs to Sociedad "Mario Mercado e Hijos" and not to the Sucesion, are sufficient,

according to the doctrine of *Gisselman* v. *Starr,* 106 Cal. 651, 657, 40 P 8, *Blaser* v. *Fleck,* 96 Or. 187, 190, 189 P 637, *Seybold* v. *Grand Folks Nat. Bank,* 5 N.D. 460, 467, 67 NW 682, *White* v. *The Mary Ann,* 6 Cal. 462, 65 AmD 523, *Sturgis* v. *Baker,* 43 Or. 236, 241, 72 P. 744; *Greene* v. *McAuley,* 70 Kan. 601, 607, 79 P 133, 68 LRA 308; *Elmquist* v. *Markoe,* 45 Minn. 305, 307, 47 NW 970, to convert partnership Mario Mercado e Hijos into the real party in interest, according to the facts of the case and the interpretation placed upon Section 51 of our Code of Civil Procedure by the courts of those states, in United States, where that civil code was originated; this section having received no interpretation yet from this angle in Puerto Rico.

3. The Supreme Court of Puerto Rico committed a plain error of law in holding, after making the following findings of facts in the ejectment case and in the instant case:

Lluberas v. *Mercado,* 55 D.P.R. 46.

> We do not wish to reach any conclusions in this case which might affect the decision of the questions on their merits, but we do state that the evidence of the witnesses has shown (and this refers to the facts proven) that the plaintiffs had knowledge of the option alleged by the defendant before the signing of deed number 14 of March 9th, 1937, *supra;* that they knew that the defendant was trying to enforce said right before the cancellation of the mortgage, and that the defendant was never given a chance to make use of its option. . . .

Mario Mercado e Hijos v. *Elvira Olivieri et als.* (Record 836, 849–850.)

> "It also appears to have been shown that both Elvira Olivieri Commins and all the other defendants in cases Nos. 311 and 312 were advised, prior to the execution of the contract of sale and lease, of the right of option to purchase and lease held by Mario Mercado e Hijos concerning the estates Juanita and Indios.

That plaintiff-appellant had not a cause of action against defendants-appellees and that defendants-appellees could escape with the fruits of the conduct represented by the above inserted findings.

4. The Supreme Court of Puerto Rico committed evident error of law in holding that the notice to defendants of plaintiff's rights to the option arising from the information furnished to defendants by the predecessors in title and co-defendant, dona Elvira Olivieri Commins, and admitted by defendant Manuel Fco. Lluberas Pasarell, was not sufficient in law to put defendant on guard and did not oblige him to act in good faith toward plaintiff-appellant, Mario Mercado e Hijos.

5. The Supreme Court of Puerto Rico committed a plain error of law in deciding that the execution of a mortgage, upon property which is subject to an option of sale in favor of a third person, on February 25, 1937 for the sum of $40,000, the keeping of the money by the mortgagee, who is a relative of the optioner owner of the property, the paying of a previous mortgage, upon which the subsistence of the option depended, with the money of the second mortgage on March 8, 1937 and the sale of the property the next day to the supposed mortgagee for the same price for which it was mortgaged only 13 days before, was not sufficient evidence of concerted action to violate the option so as to throw the burden of proof upon defendants, which burden was not maintained in this action.

6. The Supreme Court of Puerto Rico committed a plain error of law in not giving to the evidence adduced by plaintiff in the instant case its full weight and implications and in not declaring that the bad faith of the defendants established beyond doubt according to the equitable and legal principles applicable as well as in not obliging defendants-appellees by the agreement legitimately entered into in March 23, 1932; agreement which is not contrary to law.

7. The Supreme Court of Puerto Rico committed plain error of law in not adopting the interpretation placed by the parties

themselves through their own conduct upon the covenant of March 23, 1932, to the effect that the personal privileges granted to Mario Mercado e Hijos in the said covenant did not follow the mortgage notes in the hands of the holder in due course.

8. The Supreme Court of Puerto Rico committed plain error in not following its decision in the case *Lluberas* v. *Mercado*, 55 D.P.R. 46, and the clear implications of the finding of facts made in said case under evidence equal to the evidence adduced in the instant case and covering the same properties and parties.

Wherefore, plaintiff-appellant prays that the judgment rendered in this case by the Supreme Court of Puerto Rico be reversed and for such other and further relief as may seem just and proper.

Ponce, Puerto Rico, March 23, 1943.

Respectfully submitted,

PEDRO M. PORRATA,
Attorney for Plaintiff-Appellant.

Copy of the foregoing statement of errors or "points on appeal" received this twenty-third day of August, 1943.

LEOPOLDO TORMES GARCIA,
Attorney for Defendants-Appellees
LLUBERAS PASARELL,
by PEDRO JULIO PEREZ, *Clerk.*

STATEMENT ON APPEAL.

[Filed in Circuit Court of Appeals March 26, 1943.]

Honorable Court:

This appeal is being prosecuted under Title 28, Section 225, U.S.C.A., paragraph 4, providing for the review of decisions of the Supreme Court of Puerto Rico in cases involving amount in excess of $5,000.

The amount in controversy giving jurisdiction to this court appears from the complaint (R. pp. 2–12, specially at pages 5-6, 2–12, wherein it appears that plaintiff-appellant deposited with

the Secretary of the District Court of Ponce, in which court the case originated, the sum of $40,000. The allegation of the complaint in relation to this deposit was admitted in the answer (R. p. 26). An affidavit [Exhibit A] is in anyway included to show the presence of such jurisdictional amount.

The Facts and the Law of this Case Point to the Presence in the Proceedings of an Obvious Error of Law Requiring a Review on the Merits by This Court.

The case presented by this appeal is equally forciful and convincing whether approached from the substantive or adjective point of view. Let us formulate in two concise statements, with general and specific application, the substantive and procedural propositions that plaintiff-appellant intend to establish.

Substantive Proposition.

1. Plaintiff-appellant sustains that in this case an option obtained on good consideration (Complaint, R. pp. 6–7 [printed page 4], admitted by defendants in the answer R. p. 26) was deliberately avoided through a connivance, with full knowledge of the facts; (see *Lluberas* v. *Mercado*, 55 D.P.R. 39 at page 43, wherein the Supreme Court of Puerto Rico in deciding the ejectment case referred to in the opinion of the court below between the same parties and under the same facts (see R. pp. 474–75) stated that defendants in this case, who were plaintiff and losers in that case, knew that plaintiff-appellant, who was defendant and winner in that case, was trying to enforce the option right before the cancellation of the mortgage and that it was never given a chance to make use of its option) between optioner and buyers, all of them defendants-appellees in this case, who did, in order to avoid the option, precisely what the terms of the option contract specifically forbidded.

In other words: as defendants-appellees knew that plaintiff-appellant had an option to buy or lease the estates "Indios" and

"Juanita" while certain mortgage notes remain unpaid (please see, in addition to the conclusion of the Supreme Court of Puerto Rico in *Lluberas* v. *Mercado, supra,* the testimony of defendant Manuel Francisco Lluberas Pasarell, R. pp. 104–126, who acted as agent for all defendants, wherein he admits that he knew that plaintiff-appellant was the holder of the option), defendants-appellees could not legally avoid the acquired rights of plaintiff-appellant under the option contract by the rather naive trick of executing what pretends to be a mortgage in favor of the intended buyers in February 25, 1937 (R. pp. 303–311), on the estate known as "Indios" for the sum of $40,000, paying the outstanding mortgage notes with the money of the simulated mortgage on March 8, 1937, using the mortgagee, who retained the money, as agent, and then selling the mortgaged estate to the same mortgagee for exactly the amount for which the property was apparently mortgaged a few days before. (Please see, in addition to the mortgage deed of February 25, 1937, R. pp. 303–311, cancellation deed March 8, 1937, R. pp. 312–321 and sale deed of March 9, 1937, R. pp. 443–453; the almost simultaneous execution of all of which, one defendant acting as seller and the others as buyers, considered in relation to the altogether awkward terms of the mortgage deed of February 25, 1937, shows a clear cut case of conspiracy that should be treated as the Supreme Court of Puerto Rico treated it in the ejectment case and not as that court treated it in the decision now appealed from.)

PROCEDURAL PROPOSITION.

Plaintiff-appellant sustains that under section 51 of our Code of Civil Procedure, which was brought into the Island from the United States, when a defendant alleges that he is not indebted to plaintiff but to a third person (R. pp. 26–28), if the third person, to whom defendant accepts to be obliged, appears in the case and declares that defendant is not indebted to him but to plaintiff (R. pp. 281–303), defendant, then, is not entitled to prevail unless he can show some equity against the third person

which he cannot raise against plaintiff; the concern of defendant in any action being at an end when it appears from the record that a judgment under the circumstances would be a complete bar to any further harassing under the same facts. (*Giselman* v. *Starr*, 106 Cal. 653.)

In other words: The defense interpose by defendants-appellees that the heirs of Jose Tous Soto were the owners of the option (which is allege [*sic*] they violated) and not plaintiff-appellant, was more than sufficiently met and answered by the heirs appearance in court in Civil Case No. 299 of the District Court of Ponce, which is part of the evidence of this case, and declaring therein that the option belonged to plaintiff-appellant; for defendants-appellees never showed that they tried to comply with Tous Soto's heirs and they, defendants-appellees, certainly could not be regarded as liable to be sue [*sic*] by such heirs, who had solemnly appeared and admitted that plaintiff-appellant and not themselves was the holder of the option. (*Giselman* v. *Starr*, *supra*.)

Either the Substantive or the Procedural Point of View is Sufficiently Clear in Favor of Plaintiff-Appellant.

Under any of the two points of view indicated above, the decision of the Supreme Court of Puerto Rico is obviously erroneous. Moreover: considering the finding of facts made in the ejectment case (please see *Lluberas* v. *Mercado*, *supra*), the Supreme Court of Puerto Rico presents a rare case of a sort of house divided against itself. This case should, therefore, be reviewed by this tribunal in the interest of justice and fairness in human dealings. The rule is fairly well established that the wrongdoer whether cicil [*sic*] or otherwise is not to be allowed to escape with the fruits of its own wrong. (See *In re Morris*, 156 Fed. 597, 600.)

The Option Was Obviously a Personal Privilege of Plaintiff-Appellant.

Let us consider more specifically points in favor of our theory that the decision of the court below is patentedly erroneous.

The deed of March 23, 1932 contains two obviously separable contracts: (1) The first between mortgage notes debtor, dona Elvira Olivieri Commins and the holder in due course by endorsement of the mortgage notes and (2) the second between dona Elvira Olivieri Commins as owner of the estate "Indios" and partnership Mario Mercado e Hijos, plaintiff-appellant, as acceptor of the mortgage notes in payment of his debt due and collectible. The option was given in exchange for this acceptance. (Please see complaint, allegations 1 to 7, R. pp. 1–7 [printed pages 2–5], admitted in the answer, R. pp. 21–22, and showing that the acceptance is payment of the debt due and collectible of the mortgage notes was a completely separated transaction from the execution of the negotiable mortgage notes themselves.) The option contract was made specifically in favor of Mario Mercado e Hijos and not of the holder in due course of the negotiable mortgage notes. It reads as follows. (Complaint, R. pp. 6–7 [printed pages 4, 5].)

> "SEVENTH. Option to Buy and Lease: Not withstanding the terms of the previous clause the debtor, as a part of the consideration of this contract, agrees with the partnership "Mario Mercado e Hijos" to give them preference for the sale or lease of her tenancy in common in the farms "Indios and Juanita" on equal terms and price. For this purpose the debtor will communicate during the time that the mortgage credit has not been paid, by certified letter to "Mario Mercado e Hijos" any offer to sell or lease which may be made to her, and said partnership shall have a term of thirty days to accept or refuse the proposition, and during said term the debtor shall not make a sale or lease to any other person. In case a sale or lease is made in violation of this contract "Mario Mercado e Hijos" shall have the right of redemption against the purchaser or lessee which right it may exercise within 30 days after the recording of the sale or lease to subrogate itself in the place of the purchaser or lessee."

Obviously, the option to buy and lease was personal to plaintiff appellant and did not follow the negotiable notes into the hands of the holder in due course. That such is the case is shown, not only by applicable and wellknown principles of law, but by the interpretation of the parties made in the partition deed of August 20, 1936 (R. pp. 225–259) wherein plaintiff-appellant appeared as party to give her consent to said partition more than 3 years after transferring the mortgage notes to the heirs of Jose Tous Soto. This appearance was made under clause 11 of the deed of March 13, 1932 (R. pp. 322–328 at p. 328) which was another personal privilege of plaintiff-appellant. Clause 11 reads as follows (Complaint, R. p. 7 [printed page 5]):

> ELEVENTH: The parties likewise agree that the material division of said farms shall not be made without the consent of "Maria Mercado e Hijos" while the mortgage hereby created is in effect.

THE REGISTRY OF PROPERTY INFORMED EVERYBODY THAT THE PERSONAL PRIVILEGES OF PLAINTIFF-APPELLANT DID NOT FOLLOW THE MORTGAGE NOTES INTO THE HANDS OF THE TRANSFEREE.

Partition deed of August 20, 1936 was recorded in the Registry of Property (R. pp. 258–9) and as dona Elvira, the optioner, derived her title from said partition deed, it must be regarded as unquestionable that the other defendants, buyers from Dona Elvira, are imputable with knowledge of the facts revealed by that deed. (See *Ochoa* v. *Hernandez y Morales*, 230 U.S. 139–164, and *Comunidad Religiosa, etc.*, v. *Fernandez*, 61 D.P.R. 133, at page 142 spanish edition.) This legal proposition which is enough by itself, is supported as a matter of fact by the admissions of Francisco Lluberas Passarell (R. pp. 104–126), by the conclusions of facts of the Supreme Court of Puerto Rico in the ejectment case, which should be taken as conclusive jurisprudence being under the same facts, and by the binding and conclusive admission of dona Elvira, one of the defendants-appellees, to the effect that

there was a secret understanding among defendants-appellees to beat plaintiff-appellant out of their's option. (Please see R. pp. 381–384.)

THE SUPREME COURT OF PUERTO RICO MADE IN THE EJECTMENT CASE A CONCLUSIVE FINDING OF FACTS.

Let us reproduce right here the conclusion of facts in the ejectment case of the Supreme Court of Puerto Rico pertinent to the point at issue.

Lluberas v. *Mercado*, 55 D.P.R. 43:

> We do not wish to reach any conclusion in this case which might affect the decision of the questions on their merits, but we do state that the evidence of the witnesses has shown (and this refers to the facts proven) that the plaintiffs had knowledge of the option alleged by the defendant before the signing of deed number 14 of March 9th, 1937, *supra;* that they knew that the defendant was trying to enforce said right before the cancellation of the mortgage, and that the defendant was never given a chance to make use of its option.

Under the circumstances indicated above, the theory of plaintiff-appellant that, the mortgaging of "Indios" for the sum of $40,000 for only 6 months on February 25, 1937, Dona Elvira Oliviera acting as mortgagor and the other defendants as mortgagees, the retaining of the money by the mortgagee, the paying of the mortgage notes on March 8, 1937, and the selling of the property the next day, March 9, 1937, to the very same mortgagees for the very same amount of the mortgage, was nothing but the product of a connivance to beat plaintiff-appellant out of its option, must be understood as established beyond question. The Supreme Court of Puerto Rico must be regarded, therefore, as having committed obvious error in departing from the obligatory legal consequences deriving from it significant finding made in the ejectment case that defendants-appellees knew of the option and

did everything to prevent plaintiff-appellant from exercising their right.

It is true that the decision on the question of ejectment left certain legal questions for further consideration. But it did not leave open the question of "Scienter" of knowledge on the part of defendants-appellees which is also found as a matter of fact by the court in the decision appealed from. (See opinion, R. pp. 481–482.)

> It also appears to have been shown that both Elvira Olivieri Commins and all the other defendants in cases Nos. 311 and 312 were advised, prior to the execution of the contract of sale and lease, of the right of option to purchase and lease held by Mario Mercado e Hijos concerning the estate Juanita and Indios.

Defendants-appellees knew that the option was the property of Mario Mercado e Hijos. Francisco Lluberas Passarell, agent of all defendants, admitted he knew it (R. pp. 104–126). The Supreme Court of Puerto Rico, in the ejectment case, and in the present one says defendants-appellees knew it and acted deliberately. (*Lluberas* v. *Mercado,* 55 D.P.R. 39–43.) The Registry of Property informed defendants-appellees that the personal privileges granted plaintiff-appellant in deed of March 13, 1932 in exchange for accepting payment in negotiable notes of a liquidated debt, remain with plaintiff-appellant. (See *Ochoa case, supra.*) What else is necessary to oblige defendants by their knowledge and how can they escape the consequences following to him who acted with "scienter"?

Defendants' Plea Accepts Responsibility and Tries to Avoid Consequences.

Let us see now the procedural angle.

When plaintiff-appellant sued defendants-appellees, defendants-appellees pleaded that the option went with the notes into the hands of the heirs of Jose Tous Soto. (Answer, R. pp. 26–

29.) The heirs of Jose Tous Soto are in the record of this case. They solemnly say in that appearance (R. pp. 286–302 at p. 288) that the option belongs to the plaintiff-appellant and not to them, the heirs of Jose Tous Soto. Defendants-appellees did not allege or proved that they tried to fulfill the option to heirs of Jose Tous Soto. (See answer, R. pp. 26–31.) That is, they implicitly admit by their plea that they deliberately violated the option, and try to avoid responsibility by arguing that plaintiff-appellant is not the real party in interest and is, thereby, not entitled to sue them. But such position cannot be assumed by a defendant under our Code of Civil Procedure, which is of United States origin and, which, on the point at issue, has not yet been interpreted in Puerto Rico while it has been thoroughly interpreted in the States.

This is not an action tending to declare rights between Mario Mercado e Hijos, plaintiff-appellant, and Tous Soto's heirs, one acting as plaintiff and the others as defendants. Such an action is impossible under the circumstances, for it appears from the record that the Heirs have admitted that they never obtained the option.

Pertinent Provision of the Code of Civil Procedure and Judicial Interpretation of Similar Cases.

As defendants-appellees allege that plaintiff-appellant should not require compliance with the option clause, that it should be the heirs of Jose Tous Soto, the question is, therefore, reduced to the procedural problem of determining whether plaintiff-appellant complies with the requirements of party really interested within article 51 of our Code of Civil Procedure, which reads as follows:

Art. 51, Code of Civil Procedure:

> Every action must be prosecuted in the name of the real party in interest, except as otherwise provided in this Code. Appearance in court shall be made through an attorney legally empowered to exercise his profession under the provisions of this law.

To save the court time, the one indicated below is the criteria of jurisprudence in cases arising under the precise facts of our case:

"The purpose of the statute is readily discernible, and the right (of defendant to have a cause of action against him prosecuted by the real party in interest) is limited to its purpose." *Giselman* v. *Starr*, 106 Cal. 651, 657, 40 P 8 (per Henshaw, J.).

"The statute requiring that every action shall be prosecuted in the name of the real party in interest (Section 27, L. C. L.) was enacted for the benefit of a party defendant, to protect him from being again harassed for the same cause. But if not cut off from any just offset or counterclaim against the demand, and a judgment in behalf of the party suing will fully protect him when discharged, then is his concern at an end." *Blaser* v. *Fleck*, 96 Or. 187, 190, 189, P 637.

"All that the debtor is interested in is protection against a second action on the same claim." *Seybold* v. *Grand Forks Nat. Bank*, 5 N.D. 460, 467, 67 NW 682.

"It is beyond question that a recovery will bar another action for the same cause, and whenever a defendant is thus protected, he has no right to make the objection which is here set up" that the action is not brought by the real party in interest. *White* v. *The Mary Ann*, 6 Cal. 462, 65 AmD 523.

"The statute requiring that every action shall be prosecuted in the name of the real party in interest was enacted for the benefit of a party defendant to protect him from being harassed for the same cause, but if not cut off from any just offset or counterclaim against the demand, and a judgment in behalf of the party suing will fully protect him when discharged, then is his concern at an end. This is the test as to whether such a defense is properly interposed." *Sturgis* v. *Baker*, 43 Or. 236, 241, 72 P 744.

"This suggests what we conceive to be the true rule, of

general, if not universal application, that so far as affects the question of the right of the plaintiff to maintain the action the only inquiry open to the defendant is whether the plaintiff has such title to the note that a payment made to him would be a complete protection to defendant from any further liability." *Greene* v. *McAuley*, 70 Kan. 601, 607, 79 P 133, 68 LRA 308.

"A recovery by plaintiff will fully protect the defendants, and they have no interest in the equities between him and his assignor, unless an inquiry into the subject had become material upon the right of interposing some defense or counterclaim against the assignor." *Elmquist* v. *Markoe*, 45 Minn. 305, 307, 47 NW 970.

In *Giselman* v. *Starr*, 106 Cal. 653, the facts were the following:

Starr executed the note and mortgage in suit to William Giselman, trustee, in payment and cancellation of an existing note, also secured by mortgage, made by him to S. C. Hastings. A few days thereafter Giselman indorsed the note, "Pay to the order of S. C. Hastings, without recourse, William Giselman, trustee", and delivered it to Hastings. At the same time he executed, as trustee, an assignment to Hastings, coming into the hands of the executors, of whom Giselman is one, this action was in due time commenced.

The defendant meets it by answer and cross-complaint, whereby he claims that he executed the note and mortgage to Giselman, as trustee for the use and benefit of the daughters of said Hastings; that at the time of the assignment to Hastings he knew this fact, and, so knowing, took the note and mortgage without consideration; that thereafter Ella Hastings, daughter of S. C. Hastings, acquired by gift all of the interest of S. C. Hastings in the note and mortgage, and that the action is not prosecuted by the real parties in interest.

The named beneficiaries of the trust and the widow of S. C.

Hastings are interpleaded as having or claiming some interest in the mortgage and note, and are brought in under averments that without a determination of their rights defendant cannot tell to whom to pay the amount found due, nor with safety redeem in the event of a sale.

Plaintiff's answer to the cross-complaint does not, in terms, deny that the note and mortgage were executed to Giselman as trustee for the use and benefit of the named children of S. C. Hastings, but does deny that they are or ever have been the property of the children or any of them. Upon all other material averments of the cross-complaint it joins issue.

The children and others interpleaded by defendant, one and all filed "disclaimers"; and in this state of the pleadings the trial was had.

The death of Hastings and their appointment as executors admitted, plaintiffs introduced the note with its endorsement, the mortgage and the assignment of it, and rested upon this direct evidence and the presumption arising from it.

The court, after examining the facts of the case expressed itself thus:

The defendant has a statutory right to have a cause of action against him prosecuted by the real person in interest (Code Civ. Proc., sec. 307), and it was in the exercise of that right that he pleaded lack of title in plaintiffs and asked to have determined the conflicting claims of those whom he asserted to be the owners. But the purpose of the statute is readily discernible, and the right is limited to its purpose. It is to save a defendant, against whom a judgment may be obtained, from further harassment or vexation at the hands of other claimants to the same demand. It is to prevent a claimant from making a simulated transfer, and thus defeating any just counterclaim or set off which defendant would have to the demand if pressed by the real owner. But where the

plaintiff shows such a title as that a judgment upon it satisfied by defendant will protect him from future annoyance or lose, and where, as against the party suing, defendant can urge any defenses he could make against the real owner, then there is an end of the defendant's concern and with it of his right to object; for, so far as he is interested, the action is being prosecuted in the name of the real party in interest. The cases which seemingly lay down the broad rule that it is not a good plea to allege that the note sued upon is the property of another and not of plaintiff, without showing some substantial matter of defense against the one asserted to be the owner, are to be read in the light of their facts, and so read they will be found to be in strict accord with what is here said. These are cases where prima facie legal title is shown in plaintiff, such a title as would protect defendant if judgment were obtained upon it. If, under such circumstances, the defendant claims another to be the real owner, he must support his right to make that claim by showing that he has some equity or defense against the real owner which he can not maintain against the prima facie legal owner. Such is the meaning of *Price* v. *Dunlop*, 5 Cal. 483, and *Gushee* v. *Leavitt*, 5 Cal. 160, 63 Am. Dec. 116.

In *Giselman* v. *Starr*, *supra*, which is strikingly similar to ours, the person whom defendant pretended was the real party in interest appeared in the record disclaiming. The same in our case. That is why the cases cited above should be considered in their full import. They really reveal that in a triangle fight of this kind, the procedural test should be strictly applied in the interest of justice.

SUMMARY OF THE PROCEDURAL PROBLEM.

Let us summarize thus: The person with the right to file suit, which is known as the real party in interest, is not determined, in cases of this nature, by trying to settle a non-existing controversy between the supposed real party and the actual plaintiff. It is

determined by measuring the possible consequences of an adjudication upon the rights of defendant. Thus jurisprudence has already decided that, in cases of this nature, the interest of defendant is limited to being protected against being harassed for the same cause by another plaintiff. There his concern is at an end if he cannot show an equity against the third person which he cannot raised against the actual suitor. In this case, not such equity appears. On the contrary, the case clearly points out to the use of a defense with the sole purpose of escaping with the fruits of a connivance; a thing certainly not contemplated by the section of the statute above referred to.

GENERAL SUMMARY.

In this statement on appeal we have being able to demonstrate:

1. That under the same facts in an ejectment case between the same parties, the Supreme Court of Puerto Rico found "scienter" in the conduct of defendants-appellees.

2. That the record also discloses that the Supreme Court of Puerto Rico in the decision appealed from, found "scienter" on the part of defendants-appellees, but failed to give to such finding the natural and logical consequences that the law attaches to "scienter" everywhere.

United States v. *Amistad*, 10 L. Ed. 826:

> Fraud will vitiate any, even the most solemn transactions and any asserted title to property, founded upon it, is utterly void.

United States v. *Thorckmorton*, 25 L. Ed. 93:

> Fraud vitiates the most solemn contracts, documents and even judgments.

The Dos Hermanos, Green, Claimant, 4 L. Ed. 189, 193:

> It is a settled rule of this court, that if a party will attempt to impose upon the court by knowingly or fraudulently claiming as his own property belonging in part to others, he shall not be entitled to a restitution of that portion which he may ulti-

mately establish as his own. This rule is founded in the purest principles of moraliry and justice, and would bear upon the claim of Mr. Green, supposing his domicile, as a neutral, were ever so clearly established.

3. That the record shows that the conclusions of the Supreme Court of Puerto Rico in the ejectment case were sound and valid.

4. That the execution of a mortgage in February 25, 1937 on the property subject to the option, the paying of the mortgage notes with the mortgage money on March 8, 1937, and the selling of the estate to the very same mortgagees for the very same amount of the mortgage the day after, shows a clear cut act of connivance, which now defendants-appellees are trying to avoid by alleging that the option belonged to a third person and not to plaintiff-appellant.

5. That this allegation that the option belonged to the heirs of Jose Tous Soto and not to plaintiff-appellant, was sufficiently answered by the heirs' appearance in the record and stating that it did not, even if the other facts appearing from the record would not clearly show that defendants-appellees knew that plaintiff-appellant was the real owner of the option.

Exhibits.

A copy of plaintiff-appellant's complaint is included as forming part of this statement on appeal to show the facts and the theory of plaintiff-appellant case.

Conclusion.

That this appeal should be allowed and the case be heard on the merits.

Ponce, Puerto Rico, March 23, 1943.

Respectfully submitted,

PEDRO M. PORRATA,

Attorney for Plaintiff-Appellant.

Copy of the foregoing statement on appeal received this twenty-third day of August, 1943.

LEOPOLDO TORMES GARCIA,
Attorney for Defendants-Appellees
LLUBERAS PASSARELL,
by PEDRO JULIO PEREZ, *Clerk.*

EXHIBIT A.

[Title omitted.]

AFFIDAVIT.

Now comes MARIO MERCADO RIERA as managing partner of Mario Mercado e Hijos and under oath does solemnly swear and establishes:

That in the instant case Partnership Mario Mercado e Hijos deposited with the Secretary of the District Court of Ponce the sum of forty thousand dollars ($40,000).

That the amount in controversy exclusive of interest and costs in this case is by far in excess of five thousand dollars ($5,000) as represented by what the property in controversy is valued and what it means for the firm Mario Mercado e Hijos to acquire the estate.

Ponce, Puerto Rico, this twenty-third day of March, 1943.

MARIO MERCADO RIERA,
Managing Partner of Mario Mercado e Hijos.

Affidavit No. 1094.

Sworn and subscribed before me by Mr. Mario Mercado Riera as managing partner of Mario Mercado e Hijos, of age, married and resident of Ponce, Puerto Rico, to me personally known this twenty-third day of March, 1943 at Ponce, Puerto Rico.

J. C. Santiago Matos,
[SEAL] Notary Public.

25 cent Internal Revenue stamp cancelled.

EXHIBIT B.

COMPLAINT.

[MEMORANDUM: The complaint already printed at page 2 is here omitted: A. I. CHARRON, Clerk.]

MOTION TO DOCKET AND DISMISS.

[Filed in Circuit Court of Appeals April 12, 1943.]

Now come the defendants-appellees in the above-entitled case and file this motion to docket and dismiss the appeal taken by the plaintiffs-appellants against the judgment of the Supreme Court of Puerto Rico rendered July 3, 1942, on the following grounds:

FIRST. This case originated in the District Court of Ponce, Puerto Rico, by a complaint filed by the partnership Mario Mercado e Hijos, plaintiffs, *v.* Elvira Olivieri Commins et als., defendants, asking that certain deed of sale made by the defendant Elvira Olivieri Commins, to the other defendants, be rescinded, because in a previous deed of mortgage made by the said Elvira Olivieri Commins in favor of the plaintiffs, (Mario Mercado e Hijos) she promised that in the event that she (Elvira Olivieri Commins) would decide to sell the property mortgaged to plaintiffs, while the mortgage was unpaid, she would prefer as buyers the plaintiffs.

SECOND. The plaintiffs alleged in their complaint that the mortgage made by the defendant Elvira Olivieri Commins, in favor of the plaintiffs, was cancelled by payment of the amount of the mortgage to the assignee of the plaintiffs; that the plaintiffs had assigned the mortgage to a third party (the successors to Jose Tous Soto) and by such payment the mortgage was cancelled and extinguished in the registry of property of Ponce; but that the payment made by the debtor Elvira Olivieri Commins was the result of a conspiracy between said Elvira Olivieri Commins and the other defendants in order to deprive the plaintiffs of

the right (?) to acquire the property on the same conditions as sold to the other defendants.

THIRD. After a trial held at the District Court of Ponce, Puerto Rico, the court decided that there was no conspiracy or fraud whatsoever between Elvira Olivieri Commins and the other defendants and that Elvira Olivieri Commins had a perfect right to pay the mortgage and by so doing she was relieved from the promise to sell the plaintiffs the property and that she was at liberty to sell the property to any one she would choose. Once she paid the amount of the mortgage she was under no obligation to sell to the plaintiffs, because the condition to prefer the plaintiffs in case she would sell the property mortgaged, depended upon the fact that the mortgage was or not paid and that when the mortgage was paid and cancelled, then, there was no obligation on the part of Elvira Olivieri to regard the plaintiffs as prospective buyers.

FOURTH. The plaintiffs appealed from the judgment of the District Court of Ponce to the Supreme Court of Puerto Rico, and the Supreme Court on July 3, 1942 affirmed the judgment of the District Court.

FIFTH. The plaintiffs appealed from the judgment of the Supreme Court to this Circuit Court on the ground that the amount involved in this case is larger than $5,000 and we assent to that; but, we allege that the appeal taken by the plaintiffs is not justified and it has been taken to hinder and delay, because the only opportunity the plaintiffs had to obtain a rescission of the sale made by Elvira Olivieri Commins to the other defendants, was to prove fraud, but the District (trial court) Court decided, after considering all of the evidence, oral and documentary, that there was no fraud and the Supreme Court of Puerto Rico decided also that there was no fraud and furthermore that plaintiffs, according to the mortgage law of Puerto Rico, did not have any right of rescission and that the purchasers (the other defendants) were third parties or buyers in good faith.

SIXTH. In fact this case has been decided on a question of law by the trial court and by the Supreme Court of Puerto Rico, according to the mortgage law and the Civil Code of Puerto Rico, against the plaintiffs and both judgments have been rendered without doubt and as a simple question of law applicable to this country and we do not see any way or means to consider a reversal or modification of the findings of the trial court or of the Supreme Court of Puerto Rico, as to the fact that there was no fraud or conspiracy on this case on the part of the defendants. (See opinion of the Supreme Court of Puerto Rico in the typewritten transcript.)

SEVENTH. We find in the statement of appeal of the plaintiffs-appellants a gross mistake to which we believe we are obliged to call the attention of the court and that is, that the appellants at page 5 [printed page 502] of their statement on appeal, transcribe clause seventh of the mortgage deed, which refers to option to buy and lease, and they have failed to transcribe same correctly. The clause begins this way:—

> "Not withstanding the terms of the previous clause the debtor, as a part of the consideration of this contract, agrees with the partnership "Mario Mercado e Hijos" to give them preference for the sale or lease of her tenancy in common in the farms 'Indios and Juanita', on equal terms and price. . . ."

The correct transcription should be this way:

> "Not withstanding the terms of the previous clause the debtor, as a part of the consideration of this contract, agrees with the partnership 'Mario Mercado e Hijos', WHILE THE MORTGAGE HEREBY CONSTITUTED IS UNPAID, . . . to give them preference etc."

In other words, the very gist of the action, the legal point so elaborately discussed is left out from the clause, the condition that "WHILE THE MORTGAGE IS UNPAID", the plaintiffs could enforce the clause, which means that once the debtor paid the

ortgage she was under no obligation to sell to the plaintiffs but
d the liberty to sell to any one she desired.

Another point is that the plaintiffs assigned their mortgage to
ccession Tous Soto, but did not reserve the option to buy and
erefore, there was nothing shown in the registry of property to
op the defendants to negotiate with the debtor Elvira Olivieri
ommins.

A simple reading of the opinion of the Supreme Court of
erto Rico rendered by the Chief Justice, and the citations of
al law and jurisprudence contained therein, shall convince this
onorable Circuit Court that the judgment of the Supreme Court
not in any respect wrong but rendered according to law and
stice and that the appeal has been taken to hinder and delay
d is against the administration of justice.

Wherefore, defendants-appellees respectfully request that ap-
al be dismissed.

LUIS LOPEZ DE VICTORIA,
LEOPOLDO TORMES,
Attorneys for Defendants-Appellees
MANUEL FRANCISCO LLUBERAS ET ALS.

JOSE SABATER,
Attorney for Defendant-Appellee
ELVIRA OLIVIERI COMMINS.

Notified with a true copy of the above motion at Ponce, Puerto
ico, this seventh day of April, 1943.

PEDRO M. PORRATA,
Attorney for the Plaintiffs-Appellants.

JUDGMENT OF CIRCUIT COURT OF APPEALS.

August 23, 1943.

Upon consideration of the statement on appeal filed by appellant on March 26, 1943, the motion to dismiss filed by appellees on April 12, 1943, the memoranda filed by the parties thereon, and the typewritten transcript of record in this case, it is now, to wit, August 23, 1943, here ordered, adjudged and decreed as follows: The judgment of the Supreme Court of Puerto Rico is affirmed, under Rule 39 (b).

By the Court,

ARTHUR I. CHARRON, *Clerk.*

On September 17, 1943, mandate was stayed until further order of court.

CLERK'S CERTIFICATE.

I, Arthur I. Charron, Clerk of the United States Circuit Court of Appeals for the First Circuit, certify that the printed pages, numbered 1 to 518, inclusive, hereto prefixed, contain and are a true copy of the record and all proceedings to and including November 5, 1943, in the cause in said court numbered and entitled,

No. 3883,

MARIO MERCADO E. HIJOS,
Plaintiff, Appellant,

v.

ELVIRA OLIVIERI COMMINS ET AL.,
Defendants, Appellees.

In testimony whereof, I hereunto set my hand and affix the seal of said United States Circuit Court of Appeals for the First Circuit, at Boston, in said First Circuit, this fifth day of November, A.D. 1943.

[SEAL] ARTHUR I. CHARRON, *Clerk.*

SUPREME COURT OF THE UNITED STATES

ORDER ALLOWING CERTIORARI—Filed February 28, 1944

The petition herein for a writ of certiorari to the United States Circuit Court of Appeals for the First Circuit is granted, and the case is assigned for argument immediately following No. 349, De Castro vs. Board of Commissioners of San Juan.

And it is further ordered that the duly certified copy of the transcript of the proceedings below which accompanied the petition shall be treated as though filed in response to such writ.